BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Application 01-11-045 (Filed November 30, 2001)
In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Application 01-12-026 (Filed December 20, 2001)

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FINAL ARBITRATOR'S REPORT

I. Background

On November 30, 2001, Global NAPs, Inc. (U 6449 C) (GNAPs) filed an application for arbitration of an interconnection agreement (ICA) with Pacific Bell Telephone Company (U 1001 C) (Pacific) pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act or TA96). Formal negotiations between the parties commenced on January 19, 2001. As negotiations progressed, Pacific agreed to extend the closing date of the parties' arbitration window, making November 30, 2001 the date the arbitration window closed. Therefore, GNAPs' Petition was timely filed.

GNAPs agreed to negotiate the terms of an ICA based on Pacific's proposed "13-state" ICA. While there is no dispute over the vast majority of terms in the ICA, the parties have reached an impasse on 13 key issues. In its petition, GNAPs indicates that it discusses all key unresolved issues in detail, but states the petition does not identify all of the disputed language in the ICA. GNAPs requests that the Commission resolve the disputed issues on a policy level and affirmatively order the parties to implement contract language embodying this policy decision.

On December 26, 2001, Pacific filed its Response to GNAPs' application. In its Response, Pacific summarized its position on the 13 issues previously raised by GNAPs. Pacific also indicated that GNAPs' proposal that the Commission resolve disputed issues at a policy level is both impractical and contrary to law. Resolution ALJ-181 requires parties to identify the issues for which they request arbitration and propose contractual language to match. In its Response, Pacific

presents Pacific's proposed resolution of the 13 issues that are described in the Petition, with Pacific's proposed contractual language.

Similarly, on December 20, 2001, GNAPs filed an application for arbitration of an ICA with Verizon California Inc. f / k / a GTE California Inc. (Verizon) pursuant to Section 252(b) of the Act. GNAPs listed 11 unresolved issues.

Verizon filed a response to GNAPs' petition on January 14, 2002. Verizon responded to the 11 issues GNAPs raised, and added 3 others, for a total of 14 issues. Verizon points out, as did Pacific, that GNAPs articulates very narrow issues for arbitration, but proposes significant changes to the ICA, which are not mentioned in the Petition nor supported by testimony.

Conference calls were held on January 7 and January 15, 2002, to discuss the schedule for the case and to address various procedural issues. During the January 7, 2002 conference call, I, the arbitrator assigned to the proceedings, raised the issue of consolidating the two arbitration proceedings since many of the issues to be addressed were common to both. During the January 15, 2002 conference call with GNAPs, Pacific, and Verizon, I indicated my intent to consolidate the two arbitration proceedings and revised the hearing schedule. I also stressed that the Commission is not willing to make decisions at a policy level without resolving all dueling contract language.

GNAPs was ordered to make a Supplemental Filing on January 22, 2002. The filing included GNAPs' position on all areas where there is disputed language that was not addressed specifically in GNAPs' initial petitions. Pacific and Verizon filed their Supplemental Responses on February 1, 2002. An ALJ Ruling was issued on January 22, 2002 formally consolidating the two

proceedings and memorializing the procedural issues discussed during the January 15, 2002 conference call.

An arbitration hearing was held on February 11, 2002. Concurrent briefs were filed and served on March 8, 2002. The Draft Arbitrator's Report (DAR) was filed on April 8, 2002, disposing of the contested issues as set forth below. Comments on the DAR were filed on April 24, 2002 by GNAPs, Pacific, Verizon, and Pac-West Telecomm, Inc. (Pac-West). Pac-West is another CLEC, which is currently involved in an arbitration with Pacific. The comments have been taken into account as appropriate in finalizing the Arbitrator's Report, as set forth herein. The Final Arbitrator's Report (FAR) was filed and served on May 15, 2002.

Parties continued their negotiations up until the time of the hearing and resolved some issues in dispute. During the hearing, Pacific reported that only Issues 1-4 were still in dispute. Verizon reported that 12 issues, 1-5, 7-8, and 10-14 were still in dispute. Issues 1-4 are common to both Pacific and Verizon, while issues 5, 7-8, and 10-14 apply only to Verizon.

The most significant issues presented in this arbitration are:

1) Should either party be required to install more than one point of interconnection (POI) per Local Access and Transport Area (LATA)?
2) Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?
3) Should the ILECs' local calling area boundaries be imposed on GNAPs or may GNAPs broadly define its own local calling area?
4) Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

In the following discussion, I have combined Issues 1 and 2 and Issues 3 and 4 because they are so closely linked to make it difficult to discuss them separately.

GNAPs and Pacific shall file an ICA that conforms to the arbitrated decisions herein on May 22, 2002, while GNAPs and Verizon shall file their conformed ICA on May 29, 2002. Each party shall include a statement of whether the Agreement should be adopted or rejected by the Commission.

II. Disputed Issues

A. Issues 1 and 2

Issue1

Should either party be required to install more than one POI per LATA?

Issue 2

Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?

GNAPs' Position

There appears to be agreement among the parties that GNAPs can physically interconnect at a single point in each LATA. The difference of opinion centers around which party is responsible for the costs associated with a single POI option.

GNAPS seeks to have each carrier be responsible for transport on its own side of the POI because imposing costs only on the CLEC is contrary to federal law. According to GNAPs, the two ILECs' proposals differ somewhat since Verizon draws a distinction between the POI, where the carriers physically interconnect, and the IP (interconnection point) which is where financial responsibility passes. While Verizon states that its Virtual Geographically

Relevant Interconnection (VGRIP) proposal is a compromise favorable to GNAPs, GNAPs disagrees, since underlying Verizon's proposal is the need for GNAPs to purchase transport from Verizon or some other carrier, or self-provision the transport.

Pacific's proposal offers carriers a single POI physically but establishes financial terms that hold those carriers responsible for transport across Pacific's network. GNAPs asserts that this is entirely contrary to federal law, which allows a carrier to choose its point of interconnection at any technically feasible point. GNAPs asserts that this issue has been addressed elsewhere, and the ILECs' position was rejected. In Pennsylvania, Verizon was willing to interconnect at the point designated by the CLEC but demanded that the CLEC interconnect at several additional points, as Pacific does. The Third Circuit rejected Verizon's demand explaining:

> To the degree that a state commission may have discretion in determining whether there will be one or more interconnection points within a LATA, the commission, in exercising that discretion, must keep in mind whether the cost of interconnecting at multiple points will be prohibitive, creating a bar to competition in the local service area. If only one interconnection is necessary, the requirement by the commission that there be additional connections at an unnecessary cost to the CLEC, would be inconsistent with the policy behind the Act.[1]

According to GNAPs, there is no difference between Verizon's demand that GNAPs interconnect at additional locations and Pacific's demand that GNAPs interconnect at additional locations or pay Pacific's transport charges.

[1] GNAPs citing MCI Telecommunications Corporation vs. Bell Atlantic-Pennsylvania, 271 F.3d 491, 517 (3rd Cir., 2001).

GNAPs rebuts Pacific's attempt to justify its position by using the FCC's approval of Verizon's Pennsylvania 271 application. According to GNAPs, while the FCC makes a distinction between the financial and physical aspects of interconnection, it has not made a final ruling on whether or how to allocate the financial responsibilities associated with interconnection. Indeed, the FCC states: "[t]he issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM."

According to GNAPs, Pacific's and Verizon's proposals are in direct contradiction of 47 C.F.R. 51.703(b), which reads as follows:

> A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

The FCC explained the basis of this regulation in its Local Competition Order:

> We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS [Commercial Mobile Radio Service] provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge. (Local Competition Order ¶ 1042.)

The Eighth Circuit upheld § 51.703(b), and following the Eighth Circuit's decision, the FCC's Common Carrier Bureau ruled that the bar on LEC

charges for completion of LEC-originated calls in § 51.703(b) also covered charges for certain facilities used by LECs to provide such services. In response to a request for clarification from several LECs, the then-chief of the Common Carrier Bureau, A. Richard Metzger, issued a letter saying that the LECs could not charge paging service providers for the cost of "LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network.[2]

GNAPS also states that if Pacific and Verizon are allowed to charge GNAPs for transport between the POI and the additional points they designate, they can only do so for the traffic originated on GNAPs' network. Moreover, as GNAPs' witness Lundquist testified, the additional transport costs incurred by the ILECs are *de minimis* and are declining.

GNAPs rebuts the ILECs' reliance of ¶199 of the Local Competition Order which states that a:

> Requesting carrier that wishes a technically feasible but expensive interconnection would, pursuant to section 251(d)(1), be required to bear the cost of that interconnection including a reasonable profit.

According to GNAPs, a clear reading of this passage shows that this section is referring to additional costs incurred by an ILEC if the CLEC chooses a technically difficult means of interconnection—not the cost of exchanging traffic, and GNAPs has proposed the least expensive possible of interconnection methods, a fiber meet point. The cost of paying for new facilities required for interconnection is shared by the ILEC and CLEC, and the cost of mid-span fiber

[2] GNAPs citing Metzger Letter of December 30, 1997, 13 F.C.C.R. 184 (1997).

meets are shared, with each carrier paying the interconnection costs on their respective sides of the POI.

Despite the clear language in ¶199, Pacific asserts that the FCC meant that paragraph to refer to the economic cost of exchanging traffic at one point of interconnection versus multiple points of interconnection. But clearly the cost of interconnection is not synonymous with the cost to exchange local traffic.

According to GNAPs, each carrier should be responsible for transport on its own side of the POI to provide proper incentives. If GNAPs bears the ILECs' costs, they will have no incentive to control their transport costs. Rather, says GNAPs, each carrier should be responsible for transport on its own side of the POI because each party has transport costs, and due to its network topology, GNAP's costs are likely to be greater than those of the ILECs. GNAPs' witness Lundquist calculated the additional transport cost per minute to be $0.0000678 for Pacific and $.000094775 for Verizon. This is significantly lower than the charges Pacific and Verizon seek to impose on GNAPs, namely $0.002612 per minute for Pacific and $0.0055054 per minute for Verizon. According to GNAPs, those huge transport charges violate §§ 251(c)(2)(C) and (D) of the Act.

In addition, GNAPs proposed contract language for the following sections of its proposed ICA with Pacific relating to Issues 1 and 2:

- General Terms and Conditions (GT&C) § 1.1.98 "Point of Interconnection": GNAPs' proposed modification ensures that federal law dictates interconnection architecture and the associated cost responsibility from that chosen architecture.
- GT&C § 1.2.4 "Fiber Meet": GNAPs' proposed modification ensures that GNAPs can establish a single POI with Pacific, subject only to technical feasibility issues.

- Appendix Network Interconnection Methods (NIM) § 1.11: GNAPs clarifies that each party is financially and operationally responsible for all expenses relating to facilities on that carrier's side of the POI.
- Appendix NIM § 2.1: GNAPs clarifies that parties agree to no more than one POI per LATA and eliminates any uncertainty surrounding financial and operational responsibility surrounding interconnection facilities, and clarifies that the Access Service Request (ASR) process shall not be delayed.
- Appendix NIM § 2.2: GNAPs clarifies that the parties will establish one POI per LATA, and that parties will operate under such architecture unless and until GNAPs agrees to additional POIs.
- Appendix NIM § 2.3: GNAPs clarifies that the parties will continue to meet, as often as necessary, concerning the establishment of additional POIs.
- Appendix NIM § 2.4: GNAPs clarifies that each party is financially and operationally responsible for all expenses relating to sizing, operation, maintenance, and costs of transport facilities on that carrier's side of the POI.
- Appendix NIM §§ 3.1, 3.2, 3.4: GNAPs clarifies that the parties intend to utilize a fiber-meet-point method of interconnection, at any technically feasible point that GNAPs designates, and the parties do not intend to utilize physical or virtual collocation interconnection.
- Appendix NIM § 3.4.7: GNAPs explains that the parties agree to use the specific meet point interconnection architecture described in § 3.4.7.4.
- Appendix NIM § 4.1: GNAPs eliminates GNAPs' obligation to provide Pacific with excessive operational information (including forecasts) when providing written notice of its need to establish interconnection.

- Appendix NIM § 4.2: GNAPs eliminates unnecessarily burdensome requirements that GNAPs must satisfy prior to establishing interconnection with Pacific.
- Appendix NIM § 5.2: GNAPs eliminates references to outside documents such as tariffs to clarify that those documents will not unilaterally change the terms and conditions of interconnection.

In its Supplemental filing, GNAPs proposed the following arguments in support of its proposed contract language regarding Issues 1 and 2 in its ICA with Verizon:

- GT&C, Glossary § 2.66: GNAPs' proposed modification ensures that federal law dictates interconnection architecture and the associated cost responsibility arising from that chosen architecture.
- Interconnection § 2.1.1: GNAPs clearly defines single POI, establishes GNAPs' exclusive right to establish this point, and makes clear that GNAPs is not responsible for establishing additional POIs. GNAPs establishes that each party is responsible for transporting telecommunications traffic originating on its network to the POI at its own cost.
- Interconnection § 2.1.2: GNAPs clarifies the relationship between the POI established by GNAPs and the interconnection point (IP) legacy term employed by Verizon.
- Interconnection §§ 2.2.1.1, 2.2.1.2: GNAPs increases clarity with respect to the types of traffic that may ride on interconnection trunks and access toll connecting trunks, respectively.
- Interconnection § 2.2.3: GNAPs clarifies that GNAPs has exclusive authority with relation to establishing the POI and interconnection trunks.
- Interconnection § 2.2.5: GNAPs eliminates Verizon's arbitrary limit on the total number of tandem

interconnection trunks between the parties and eliminates a related non-symmetrical ordering requirement imposed upon GNAPs.

- Interconnection § 2.3.1: GNAPs clarifies that each party using one-way interconnection trunks must deliver such traffic to each other's POI and must deliver such traffic at its own expense or purchase transport. This modification makes collocation of Verizon facilities at GNAPs' POI conditional upon the consent by, and pursuant to terms and conditions imposed by, GNAPs. This modification also makes other elements of this language asymmetrical (as consistent with the Act's higher standard of interconnection rights of competing carriers). It also removes nonsymmetrical trunk utilization requirements imposed upon GNAPs by Verizon.
- Interconnection § 2.3.2: GNAPs eliminates language imposing facility or transport provision requirements upon Verizon for the delivery of traffic from Verizon to GNAPs.
- Interconnection § 2.4.3: GNAPs' proposed modification reflects GNAPs' exclusive right under federal law to designate the POI.
- Interconnection § 3.1: GNAPs' proposed modification establishes GNAPs' exclusive right to establish an end point fiber-meet arrangement, makes requirements for such an arrangement mandatory, and establishes that GNAPs need not designate more than one POI per LATA. GNAPs establishes that each party is responsible for transporting telecommunications traffic originating on its network to the POI at its own cost.
- Interconnection § 3.2: GNAPs indicates that end point fiber-meet arrangements will be treated in the same manner as other wireline interconnections and eliminates Verizon's requirements for agreement on procedures to govern such arrangements.

- Interconnection § 3.3: GNAPs' proposed modification is designed to clarify the nature of end point fiber-meet arrangements established between the parties. It eliminates Verizon's restrictions on the traffic that may ride over end point fiber meet arrangements. It adds a new section providing for 1) clearly defining the definition and purpose of such arrangements, 2) covering site selection, consistent with GNAPs' proposed single POI architecture, and terminal specification, 3) physical interface, 4) transmission characteristics, 5) disablement of the data communications channel between the parties, 6) firmware / software compatibility and upgrades, 7) inventory and provisioning, and 8) facility provisioning, maintenance, surveillance, and restoration.
- Interconnection § 5.2.2: GNAPs eliminates Verizon's unreasonable trunk ordering requirements.
- Interconnection § 5.3: GNAPs reiterates the requirements for interconnection at the POI and eliminates Verizon's overly restrictive provisions relating to subtending arrangements between tandem and end office switches.
- Interconnection § 7.1.1.1: GNAPs eliminates language that would require GNAPs to establish interconnection points in each Verizon local calling area and thereby violates GNAPs' right under federal law to establish a single POI per LATA.
- Interconnection § 7.1.1.2: GNAPs eliminates a Verizon provision that would allow Verizon to designate GNAPs' collocation sites at Verizon end-office wire centers as GNAPs' interconnection points, a requirement contrary to GNAPs' exclusive right to establish a single POI per LATA. This modification would also eliminate related dispute-resolution provisions.

- Interconnection § 7.1.1.3: GNAPs eliminates Verizon's dispute resolution provisions for disagreements between the parties regarding the POI, and a related cap on interim intercarrier compensation paid by Verizon to GNAPs, and instead allows the parties to pursue actions before the relevant state commission.
- Interconnection § 9.2.2: GNAPs' proposed modifications recognize GNAPS' sole discretion to establish access toll connecting trunks with interexchange carriers.

Pacific's Position

Pacific states that it does not require a CLEC to install more than one POI in a LATA. The only limitation Pacific suggests is that the network interconnection architecture plan should be developed by other parties and should seek to ensure that each party is financially responsible for about half of the interconnection facilities. Pacific states that the CLEC's designation of a single POI and its financial responsibility for the additional cost to the ILEC are two different issues. According to Pacific, no decision at the FCC, by this Commission, or of any court prohibits the ILEC from seeking compensation for the additional cost of a single POI.

In its recent decision on the Verizon Pennsylvania 271 application, the FCC confirmed that an ILEC is entitled to recover the cost of transport imposed on it by a single POI arrangement.

GNAP's witness Lundquist asserts that the FCC confirmed GNAPs position at paragraphs 70 and 72 of the Intercarrier Compensation NPRM.[3] In its

[3] Notice of Proposed Rulemaking, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 01-132 (rel. April 27, 2001) "Intercarrier Compensation NPRM."

NPRM, the FCC expressly indicates that it has not addressed the issue of financial responsibility for a single POI. It requests comment on these questions:

> If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and / or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? (Intercarrier Compensation NPRM, ¶ 113).

According to Pacific, GNAPs' argument that FCC Rule 47 C.F.R. § 703(b) prohibits an ILEC from recovering the costs of transporting calls to a CLEC's single POI is misleading because upon reviewing this rule in 1997, the Eighth Circuit strictly limited its application to CMRS providers.[4]

Pacific asserts that the Commission should affirm what it said in D.99-09-029:

> A carrier may not avoid responsibility for negotiating reasonable intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local…A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities. (D.99-09-029, mimeo, at 18.)

GNAP's witness Lundquist purported to calculate the additional transport cost that Pacific would incur under the single POI arrangement that

[4] Iowa Utils. Bd. v. FCC, 120 F.3d 753, 800 n.21 (8th Cir. 1997), aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 119 S.Ct. 721,142L.Ed. 2d 835 (1999).

GNAPs seeks. According to Pacific, Lundquist admitted that, under the single POI arrangement, the ILEC would incur additional costs for transporting calls beyond the local calling area and to the POI. Lundquist insisted, however, that such transport costs would be "de minimis." By his own admission, his study was based on arbitrary assumptions (such as using "the average traffic today for the incumbent," despite all the differences that he postulated between ILEC and CLEC networks and business strategies), erroneous data (such as the mixture of Pacific and Verizon wire centers), and a willful failure to collect data that might actually have been pertinent, (such as basic information about GNAPs' customers and network).

Pacific's witness Mindell testified that for those local calls that are made within a local calling area that does not support a tandem where GNAPs has a POI, GNAPs should pay TELRIC-based transport and tandem switching rates. This is based on the determination this Commission made in the AT&T / Pacific and Level 3 / Pacific arbitrations.

Pacific's cost witness Pearsons testified that Pacific incurs costs for transporting calls beyond the local calling area. According to Pearsons, Lundquist's analysis was overly simplistic. Lundquist calculated average transport from the calling area to all points in the LATA, while what is at issue here is the additional costs incurred by GNAPs' traffic, not the average. Also, Lundquist's analysis did not reflect GNAPs' actual traffic and customer locations.

Pacific presented its position on the disputed contract language relating to Issues 1 and 2 as follows:

- GT&C POI Definition: Pacific's language is a functional description. Contrary to what GNAPs says, the definition of "meet point" at 47 C.F.R. § 51.5 says

nothing about cost responsibility. With that important qualification, Pacific would not oppose GNAP's change.

- GT&C "Fiber Meet" Definition: Nothing in Federal law gives a CLEC the unilateral right to designate a technically feasible point. The actual process is spelled out in 47 C.F.R. § 51.321. GNAPs' issue is not definitional. It creates substantive rights and obligations.
- NIM § 1.11: GNAPs would make each party financially responsible for all expenses relating to facilities on its side of the POI. As discussed above, this is not the law.
- NIM § 2: In its Response to the Petition for Arbitration, Pacific proposed a new Section 2 of Appendix NIM. GNAPs did not address Pacific's request in its Supplemental Filing. Pacific's offer is a reasonable way to allocate financial responsibility between Pacific and GNAPs. GNAPs would pay TELRIC-based charges for transport and, if applicable, tandem switching, only when Pacific's end user and GNAPs' POI are located within different tandem sectors and different exchanges. This is a considerable compromise by Pacific since a tandem sector is comprised of all local exchanges, the end offices of which are homed to that tandem. Pacific notes that GNAPs' proposed changes to the remainder of § 2 would impose all financial responsibility for a single POI arrangement on Pacific.
- NIM § 3.4.1: Pacific does not object to deleting methods of interconnection that GNAPs does not intend to use, but Pacific does object to the words "that GNAPs designates" in Section 3.4.1. Technical feasibility is not a matter of one party unilaterally "designating" a point. Such language takes away Pacific's right under Federal rules to evaluate whether interconnection at a particular point is technically feasible.
- NIM § 3.4.2: GNAPs does not say what is objectionable about this provision that the POI is for the provision of

interconnection trunking only, and not for access by the CLEC to loop plant or other services.

- NIM § 3.4.3: This section requires the Data Communications Channel be shut off, so that each party can control its own network. GNAPs does not say what is objectionable about this provision.
- NIM § 3.4.7 : Pacific does not object to GNAPs' statement that the parties agree to use the specific meet point interconnection architecture described in § 3.4.74. However, without explanation, GNAPs deletes language from the description of Design One 3.4.7.1.
- NIM § 4: GNAPs does not say what is excessive or burdensome or why. The only requirement GNAPs specifically mentions, forecasts, is non-binding. Pacific's proposal recognizes that certain technical information must be provided, discussed or agreed upon before interconnection is activated.
- NIM § 5: Pacific notes that the language GNAPs proposes to delete refers to interconnection in SBC-Ameritech and SNET. Thus, the deletion was not necessary, although Pacific does not object to its deletion.

Verizon's Position

Verizon's VGRIP proposal permits GNAPs to physically interconnect with Verizon at only one point on Verizon's existing network. GNAPs' proposed contract language associated with Issue 1, which interjects the Network Interface Device (NID) into the definition of the physical POI, is confusing.

According to Verizon, its VGRIP proposal equitably allocates the costs caused by GNAPs' interconnection decisions. GNAPs confuses its ability to select the point on Verizon's network at which the parties will physically exchange traffic with the ability to force Verizon to bear the additional incremental costs associated with that decision.

To ensure that Verizon does not bear all the additional incremental costs resulting from GNAPs' decision to establish only one physical POI in a LATA, Verizon should be able to differentiate between that physical POI and a point on the network where financial responsibility for the call changes hands. Verizon refers to this demarcation of financial responsibility as the "interconnection point" or IP. A typical example involves designation of a GNAPs' collocation arrangement at a Verizon tandem wire center in a multi-tandem LATA as the financial demarcation point. In this example, this IP may be outside the originating calling area, in which case, Verizon would absorb some of the additional costs for transporting the call to that tandem. In this respect, Verizon's VGRIP proposal represents a significant compromise for both parties because both would bear a portion of the additional incremental costs of transport beyond the local calling area.

Once Verizon delivers traffic to GNAPs' IP, GNAPs is financially responsible for delivery of this traffic to its switch. GNAPs would need to purchase transport from Verizon or another carrier or self-provision the transport. According to Verizon, its IP concept is no different than the concept of "collection points" discussed by GNAPs' witness Lundquist. Lundquist stated that at the "collection point" a CLEC would aggregate the traffic it receives and send it to a CLEC switch that serves a "wider area" than the collection point.

Under another VGRIP option, if GNAPs chooses not to establish an IP at the Verizon tandem or at the Verizon end office at which GNAPs collocates, the financial demarcation point - in this case a "virtual IP" – would be at the end office serving the Verizon customer who places the call.

Verizon contends that GNAPs' contract proposal impermissibly shifts GNAPs' costs of providing local service to Verizon. While Verizon agrees that

GNAPs is free to minimize its investment in switches, Verizon asserts that GNAPs' proposal to require Verizon to bear the cost of transport to GNAPs' switch must be rejected.

GNAPs' witness Lundquist testified that the additional incremental costs Verizon would incur in transporting traffic to GNAPs' POI were "de minimis." Whether the transport costs are significant or insignificant is not the test for who should bear those costs. But still, GNAPs' cost analysis was flawed. Lundquist's average distance from any particular Verizon wire center to GNAPs' POI was based on the assumption that the volume of traffic from each Verizon wire center was proportional to each access line served from that office. First, the additional cost is not dependent on the number of access lines served by a wire center, but upon the amount of traffic exchanged between the carriers and the number of dedicated transmission paths to GNAPs' physical POI. Second, the number of access lines served by a particular Verizon switch would not directly affect the average distance because Verizon's switches are not connected by access lines, they are connected by interoffice facilities. To calculate the true average distance, Lundquist should have used the facilities that serve the Verizon exchanges, instead of the number of access lines, to determine the weighted average. Third, Verizon states that the unit of measure that Lundquist used in his analysis was incorrect. The incremental transport at issue is the transport that is dedicated to the transmission of traffic between Verizon and GNAPs. Lundquist incorrectly used a common transport application in his estimate of incremental transport costs. Fourth, Lundquist did not account for tandem switching involved in delivering Verizon's traffic over common interoffice facilities to the single POI.

According to Verizon, even using GNAPs' flawed approach, when the correct inputs are applied, the additional costs are not "de minimis." Corrected inputs reveal a 98.4% higher transport cost than what Lundquist calculated.

This Commission has expressed its concern that parties who interconnect with one another do so in an equitable manner. In D.99-09-029, the Commission held that:

> Carriers are entitled to be fairly compensated for the use of their facilities and related processing functions for the actual delivery of a call, irrespective of how a call is rated based on its NXX prefix. (Conclusion of Law 5.)

Although this order addressed the virtual FX (foreign exchange) issue, it is evident that the Commission expects interconnecting parties to fairly compensate one another for the facilities that are used to deliver a call.

Verizon states that the Commission had occasion to address a variation of these issues in an arbitration between Level 3 and Pacific Bell. In the Level 3 FAR, the Commission observed that:

> The parties should not…interpret the arbitrated outcome as finding against other compensation schemes Pacific might subsequently propose for recovery of its transportation costs for carrying traffic to a CLEC's POI. Similarly, it should not be interpreted as permitting parties to avoid their responsibilities to negotiate reasonable compensation for the exchange of various kinds of traffic. (Level 3 FAR at 47.)

In addition, Verizon indicates that its VGRIP proposal is consistent with the FCC's Local Competition Order. When read together, ¶¶ 199 and 209 provide that a CLEC will make efficient decisions about where to interconnect with an ILEC because the CLEC is responsible for the costs of that interconnection.

Verizon indicates that other state commissions—including Florida and North and South Carolina—have rejected proposals similar to that proposed by GNAPs. According to Verizon, these state commissions have recognized that a CLEC's choice to locate one POI per LATA imposes additional transport costs on an ILEC.

Verizon presents the following arguments for adopting its proposed contract language relating to Issues 1 and 2:

- Interconnection §§ 2.2.1.1 and 2.2.1.2: GNAPs' changes to these sections misstate the law. GNAPs would expand the types of traffic that can be carried on interconnection trunks, based on whether the carrier of the traffic imposes a charge for the traffic. The imposition of charges is not the defining criterion for Exchange Access traffic.
- Interconnection § 2.2.5: GNAPs' proposal eliminates essential engineering design requirements. By limiting the amount of traffic at the Verizon tandem, § 2.2.5 ensures the network reliability for the operation of Verizon's common trunk groups and tandem switches and enables Verizon to avoid premature exhaust of its tandem switches. GNAPs offered no explanation on why it should not abide by these standards.
- Interconnection § 3: Because a fiber meet arrangement requires a high degree of joint engineering, provisioning, maintenance and utilization, Verizon has proposed that the parties reach mutual agreement in the form of a memorandum of understanding (MOU) prior to deploying a fiber meet. The MOU would become an addendum to the ICA. Verizon and GNAPs have successfully used MOUs to implement these types of arrangements in other jurisdictions. Verizon states that its approach to fiber meet arrangements is consistent with the FCC's Local Competition Order. As the FCC observed, because each carrier derives benefit from the

mid-span meet, a type of fiber meet arrangement similar to an end point fiber meet, "each party should bear a reasonable portion of the economic cost of the arrangement." In addition, because the mid-span meet requires the ILEC to build new fiber optic facilities to the CLEC's network, the FCC has determined that the parties should mutually determine the distance of this build-out. (Local Competition Order ¶ 553.)

- Interconnection § 5.2.2 and 5.3: GNAPs must order transport facilities separate from interconnection trunks, and GNAPs' unexplained changes to § 5.2.2 interfere with that process. Section 5.3 does not affect GNAPs' ability to select the POI. It addresses the switching system hierarchy and traffic routing on which the parties must rely to properly route traffic. GNAPs' proposed modification conflicts with the Local Exchange Routing Guide (LERG), which is the standard that carriers use to route traffic.
- Interconnection § 2.3: GNAPs' edits are inconsistent with the changes GNAPs proposed to the two-way trunking sections. GNAPs' proposal is inconsistent with how Verizon currently handles one-way trunking with CLECs in California.
- Interconnection § 7: GNAPs makes a number of inappropriate and unexplained edits in § 7 of the ICA.
- Interconnection § 9: Verizon's proposed language allows GNAPs to purchase access toll connecting trunks from Verizon for the transmission and routing of exchange access traffic. When GNAPs asks Verizon for trunks that will connect GNAPs' customers to interexchange carriers (IXCs) through Verizon's tandems, GNAPs is ordering access toll connecting trunks from Verizon. Because those trunks provide an access service, they are properly ordered from Verizon's access tariffs.

Discussion:

The parties do not dispute the fact that GNAPs can designate a single POI per LATA. The conflict arises in addressing Issue 2; namely, whether each carrier should be responsible for transporting traffic on its own side of the POI.

In its Comments on the DAR, Verizon indicates that the DAR is consistent with decisions of the FCC, the federal courts, and this Commission. (Verizon Comments at 2.) In support of its position that the outcome in the DAR on Issue 2 is consistent with FCC orders, Verizon cites to ¶¶ 199, 209 in the Local Competition Order and ¶ 113 in the Intercarrier Compensation NPRM.

The pertinent part of ¶ 199 reads as follows:

> [A] requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.

This section is not addressing the single POI issue, and a reasonable interpretation could be made that it was referring to costs associated with a specific form of interconnection or interconnection in a particular place. It is a stretch to draw the single POI issue in under the umbrella of ¶ 199 when there is no specific mention of either a single POI or the responsibility for transport of traffic.

In ¶ 209, the FCC discusses the need to develop a minimum list of technically feasible points of interconnection. A portion of that paragraph reads as follows:

> Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection,

> competitors have an incentive to make economically efficient decisions about where to interconnect.

Once again, this paragraph is not on point. There is no dictum relating to transport costs associated with a CLEC selecting a single POI for interconnection. This paragraph simply states that ILECs must be compensated for additional costs incurred in providing interconnection, which relates to how and where the CLEC chooses to interconnect.

As GNAPs points out in its comments on the DAR, the FCC has provided input on the specific issue we are dealing with here, namely whether the CLEC which selects a single POI per LATA should pay transport and tandem switching charges.

In its Comments on the DAR, GNAPs asserts that the determination in the DAR to award Pacific and Verizon transport costs violates 47 CFR § 51.709(b) and § 51.703(b). Section 51.703(b) states: "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." According to GNAPs, this regulation mandates that the originating carrier must be responsible for the cost of getting its outbound traffic to the interconnecting carrier. GNAPs concludes that the DAR's requirement that GNAPs pay transport and tandem switching charges for carrying traffic across the ILECs' networks to GNAPs' single POI is imposing the burden upon GNAPs of paying for the transport of traffic originating on the ILECs' networks in violation of §§ 51.709(b) and 51.703(b).

Critics of Rule 51.703(b) could say that this section does not apply in this case because it does not take the single POI option into account. However, in its Kansas / Oklahoma 271 Order the FCC clarified that Rule 51.703(b) does apply in those cases involving a single POI. Paragraph 235 reads as follows:

> Finally, we caution SWBT [Southwestern Bell Telephone] from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC's point of interconnection. In our *SWBT Texas Order*, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. [5]

The FCC makes it clear that, even in the case of a CLEC that chooses to have only one POI per LATA, § 51.703(b) applies. If GNAPs elects to have only one POI per LATA, the ILECs cannot require GNAPs to pay transport and tandem switching charges to transport traffic from their customers to GNAPs' POI.

[5] Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications Inc., Southwest Bell Telephone "Company, and Southwestern Bell Communications Services, Inc. d / b / a Southwest Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (rel. January 22, 2001), ¶ 235, "Kansas / Oklahoma 271 Order." (footnotes omitted)

In its Intercarrier Compensation NPRM, the FCC recognizes the need to revisit this rule, but at the same time, the FCC reiterates that the current rule applies. Paragraph 112 states:

> Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network. These rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. Application of these rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI. (Intercarrier Compensation NPRM ¶ 112.)

Pacific and Verizon both cite ¶ 113 of the FCC's Intercarrier Compensation NPRM, in support of the proposition that GNAPs should pay transport and tandem switching charges to bring traffic to its single POI. Paragraph 113 does open this issue for comment; however, the FCC has not yet issued an opinion in the Intercarrier Compensation NPRM. The FCC's eventual determination on this issue will govern. In the meantime, the FCC itself in ¶ 112 indicates that its current rules preclude charging carriers for local traffic that originates on the ILEC's network. Therefore, the FCC has made it clear that under its current rules, GNAPs cannot be required to pay transport and tandem switching to the ILECs for transporting traffic to its POI.

Next we need to determine whether the district court cases Verizon cites would overturn the FCC's determinations.

The first case involves a 2001 Third Circuit decision which rejected a requirement by the Pennsylvania state commission that would have required WorldCom to establish more than one POI if only one interconnection point was "necessary." The Court upheld WorldCom's right to establish a single POI and went on to say:

> The PUC's requirement that Worldcom interconnect at these additional points is not consistent with the Act. We will affirm the District Court's decision, rejecting the PUC's interconnection requirements. To the extent, however, that Worldcom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to Worldcom.[6]

The Third Circuit closed this section of its opinion with a reference to ¶ 209 of the FCC's Local Competition Order, which was cited above. However, the Court had only the single POI issue before it, not the issue of whether WorldCom should pay transport and tandem switching charges to bring traffic to its single POI. There was no examination of FCC Rule 51.703(b), and no ruling that the FCC's rule violates the Act. In that sense, this is merely dicta, and not a holding by the court.

The second case Verizon cited was a 1998 Oregon case involving U S West Communications, Inc. and three CLECs who appealed the outcome in a § 252 arbitration proceeding to Federal District Court.[7] The issue centered around whether the CLECs could establish a single POI. The situation is much

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[6] MCI Telecommunications Corporation vs. Bell Atlantic-Pennsylvania, 271 F.3d 491, 518 (3rd Cir., 2001).

[7] U S West Communications, Inc. v. AT&T Communications, Inc., 31 F.Supp.2d839,853 n. 8 (D.Or. 1998).

the same as with the Third Circuit decision cited above. The Court shared the Oregon Commission's concern that requiring all carriers to interconnect within each local calling area could impair the ability of competing carriers to implement more advanced network architectures. The Court closes with the following:

> On the other hand, a reasonable argument can be made that additional compensation should be required of a carrier that seeks to interconnect in a manner that is extremely inefficient or exhausts existing network facilities. If USWC believes a particular request for interconnection will impair network facilities or cause it to incur extraordinary costs, it may seek Commission resolution of the matter under the dispute resolution procedures in the contract.

In this case, as was true with the Third Circuit case above, the issue of whether a CLEC that chooses a single POI per LATA should be required to pay transport and tandem switching charges was not before the court. The court did not examine FCC Rule 51.703(b) or make any determination regarding that rule.

We also need to look at this Commission's findings on this issue. In D.99-09-029, this Commission determined that carriers should be compensated for the use of their networks. The Commission determined that carriers should negotiate the appropriate compensation in their interconnection negotiations. I note that the Commission made its determination in 1999, while the FCC's clarifying language relating to FCC Rule 51.703(b) came two years later--in 2001. This Commission has not had an opportunity to review its determination in light of the FCC's later rulings. The Commission's determination in D.99-09-029 is at odds with the FCC's language in both the Kansas / Oklahoma 271 Order and the Intercarrier Compensation NPRM which I cited above. In an arbitration under

Section 252(b), federal law and regulations have precedence. The FCC's Rule 51.703(b) is in effect and governs the outcome here.

I have adopted GNAPs' position regarding Issue 2, which also helps to resolve the questions I posed in the DAR relating to Verizon's IPs (interconnection points). In Interconnection Attachment § 2.1.2, I adopt GNAPs' proposed language which states that Verizon shall treat GNAPs' IP as Verizon's relevant IP, and GNAPs will treat its POI as GNAPs' relevant IP. Since the IP is the point where financial responsibility for traffic passes from one carrier to another, that statement is consistent with my finding that each carrier should be responsible for traffic on its own side of the POI.

In the following section, I dispose of all the disputed contract language in the ICA between GNAPs and Pacific, relating to Issues 1 and 2:

- GT&C § 1.1.98: Pacific's proposed definition of the POI, which is clear and concise, is adopted.
- GT&C § 1.2.4: Pacific's proposed definition is adopted. 47 C.F.R. § 51.321 does not give GNAPs the unilateral right to determine which interconnection points are technically feasible.
- NIM § 1.11: GNAPs' language is adopted. Each LEC is responsible for expenses relating to facilities on its side of the POI.
- NIM §§ 2-A, 2-B, 2-C: In its Comments on the DAR, Pacific indicates that the DAR overlooks these sections of Pacific's proposed ICA, which were included in Pacific's Supplemental Filing of February 1, 2002. Sections 2-A, 2-B, and 2-C govern financial responsibility for calls transported within the same calling area as the POI and between different calling areas. Pacific's proposed language is rejected. It is inconsistent with my determination that GNAPs cannot be required to pay for transport of traffic on Pacific's side of the POI.

- NIM § 2.1: Pacific's proposed language is adopted. Pacific's language includes the fact that GNAPs may have a single POI per LATA.
- NIM § 2.2 GNAPs' proposed language is adopted. That language reflects the fact that GNAPs is not required to have more than one POI per LATA, and that parties will operate with the single POI until the parties agree to establish additional POIs.
- NIM § 2.3: GNAPs' proposed language is adopted. It simply says the parties will meet as often as necessary to negotiate the number and location of new POIs.
- NIM § 2.4: GNAPs' proposed language is adopted. It reflects the fact that each party is responsible for the facilities on its side of the POI and for the costs of the transport facility to the POI.
- NIM §§ 3.1 and 3.2: GNAPs' proposed language is adopted. If GNAPs does not intend to use physical or virtual collocation to interconnect with Pacific, there is no reason to have the provision in the ICA.
- NIM § 3.4.1: Pacific's proposed language is adopted, with modification. While Pacific is correct that GNAPs cannot unilaterally determine whether a meet point is technically feasible, that point does not have to be agreed to by the parties. GNAPs does have the unilateral right to select a POI, unless the point is deemed technically infeasible.
- NIM §§ 3.4.2 and 3.4.3: Pacific's proposed language is adopted. GNAPs does not indicate the reasons for its objections to the language.
- NIM § 3.4.7.1: GNAPs' proposed language is adopted. Pacific attempts to interject a statement that the POI will be at a mutually agreeable location, with the intent of a 50/50 share in the cost of the facilities. GNAPs has the right to select the POI, subject only to technical feasibility issues, and each carrier will pay the cost of facilities on its side of the POI. In its Comments on the

DAR, Pacific states that this section should be deleted since GNAPs has said it will not use that method of interconnection. Pacific's suggestion is rejected. GNAPs proposed changes to this section, and so presumably GNAPs intends to use that form of interconnection during the life of the ICA.

- NIM § 4.1: Pacific's proposed language is adopted. In order for the parties to interconnect, certain information needs to be exchanged. GNAPs takes exception to providing forecasts, but those forecasts, which are non-binding, are necessary to determine the trunk facilities needed to exchange traffic.
- NIM §§ 4.2, 4.4, 4.5: Pacific's language is adopted. GNAPs says the requirements are burdensome, but does not say why. The three sections include sound operational requirements for the parties to work together to implement an interconnection arrangement. A facility handoff point must be determined and trunk facilities must be planned based on the trunk forecasts.
- NIM § 5.2: GNAPs' proposed language is adopted. As Pacific states, the provision GNAPs wants deleted does not apply to Pacific, only to SBC-Ameritech and SNET. There is no need to have that language in the ICA.
- NIM § 5.6: Pacific's proposed deletion is adopted. The section refers to the fact that facilities could be provided out of a tariff.

In the following section, I dispose of all the disputed contract language in the ICA between GNAPs and Verizon, relating to Issues 1 and 2:

- GT&C Glossary § 2.66: Verizon's proposed definition is adopted. GNAPs' reference to the FCC's definition for the NID has nothing to do with the definition of a POI.
- GT&C Glossary § 2.95: Verizon's more detailed definition is adopted. It is clearer than GNAPs' definition.

- Interconnection § 2.1.1: GNAPs' proposed language is adopted. GNAPs is entitled to have only one POI per LATA, and each party is responsible for transporting traffic originating on its network to the POI.
- Interconnection § 2.1.2: GNAPs' proposed language, which describes the relationship between the POI and Verizon's IPs, is adopted. GNAPs indicates that the IP will be located at the POI. This is appropriate since financial responsibility passes from one carrier to the other at the POI.
- Interconnection §§ 2.2.1.1, 2.2.1.2: Verizon's proposed language is adopted. Toll traffic does not have to be billed as a separate charge on customers' bills.
- Interconnection § 2.2.3: GNAPs' proposed language is adopted. GNAPs has the right to determine whether it wants to use one-way or two-way trunking. The FCC established this right in its Local Competition Order. 47 C.F.R. § 51.305(f) states: "If technically feasible, an incumbent LEC shall provide two-way trunking upon request."
- Interconnection § 2.2.5: In its Comments on the DAR, Verizon states that setting a limit on the number of tandem interconnection trunks will ensure network reliability and avoid premature exhaust of Verizon's tandem switches. Verizon indicates that it has this arrangement with other CLECs in California. Verizon's arguments are compelling so Verizon's position is adopted.
- Interconnection § 2.3: Verizon's proposed language is adopted with modification. Verizon's language reflects the fact that each party must provide transport to get the traffic to the IP (which is the same thing as the POI). GNAPs' language in § 2.3.1.1 is adopted in that collocation with GNAPs is at GNAPs' sole discretion (*See* Issue 12).

- Interconnection § 2.4.3: GNAPs' proposed language is adopted. GNAPs has the authority to designate the site for the POI, subject only to technical feasibility.
- Interconnection § 3: Verizon's proposed language is adopted. It is consistent with the FCC's discussion in ¶ 553 of the Local Competition Order.
- Interconnection §§ 5.2.2 and 5.3: Verizon's proposed language in § 5.2.2 is rejected. It requires GNAPs to purchase facilities at a particular Verizon central office, which is on Verizon's side of the POI. GNAPs is not required to purchase facilities on Verizon's side of the POI. Verizon's proposed language in § 5.3 is adopted. As Verizon says, § 5.3 does not affect GNAPs' ability to select the POI; it simply lists Verizon's switching hierarchy.
- Interconnection § 7: GNAPs' proposed language is adopted. It is consistent with my determination that GNAPs is not required to have more than one IP, which is located at the POI.
- Interconnection § 9.2.2: Verizon's position is adopted. If GNAPs plans to route traffic to IXCs, it must have access toll connecting trunks in place.

B. Issues 3 and 4

Issue 3

Should the ILECs' local calling area boundaries be imposed on GNAPs, or may GNAPs broadly define its own local calling areas?

Issue 4

Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

GNAPs Position

GNAPs intends to offer LATA-wide local calling by defining its local calling area as the entire LATA. All intraLATA traffic exchanged between GNAPs and Pacific or Verizon should be treated as subject to local compensation under § 251(b)(5) and should not be subject to intrastate access charges. GNAPs asserts that its proposal would exert downward pressure on the current monopoly-priced intraLATA access services by offering an innovative competitive telecommunications product.

GNAPs indicates that its designation of a LATA-wide local calling area is clearly permitted by law. The FCC has permitted the states to determine what geographic areas should be considered "local areas" for purposes of applying reciprocal compensation obligations under § 251(b)(5).

According to GNAPs the definition of local calling areas (LCA) is a legacy of an ancient telephone network topology. Deployment of fiber has made call quality distance-insensitive and rendered application of distance-based charges virtually meaningless. GNAPs asserts that the ILECs' LCAs should not define GNAPs' LCAs because there is no cost basis for these calling areas.

Pacific and Verizon propose to allow GNAPs to expand its local calling area, yet assess intrastate access charges on GNAPs when calls pass between ILEC-defined LCAs. That would put GNAPS in an impossible price squeeze because GNAPs' costs for the call resulting from access charges are in excess of retail rates that GNAPs could reasonably charge end-users.

GNAPs states that it should be allowed to assign its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides. Consistent with historic practice, a call's status as "local" should be determined by referring to the NPA-NXXs[8] of the calling and called numbers, and this principle should apply in the context of foreign exchange (FX) service. A party that terminates such FX traffic should receive reciprocal compensation from the originating carrier if the NPA-NXX codes indicate that the call is local.

Standard industry practice establishes the fact that FX traffic is local. The classification of the call is determined by comparing the rate centers associated with called and calling party's NPA-NXXs, not the physical location of the customers. The ILECs' proposal to treat calls from their customers to GNAPs' FX customers as toll traffic is a departure from the ILECs' own method of determining jurisdiction. According to GNAPs, the ILEC proposals are impractical because there is no readily available information that tells a carrier the physical location of a calling or called party.

[8] Telephone numbers are generally assigned in blocks of 10,000 numbers. Each 10,000-number block is identified by a three-digit area code (or Number Plan Area, NPA), followed by a three-digit (NXX) central office code.

GNAPs states that the ILECs' proposals to impose access charges on GNAPs for calls to GNAPs' FX customers and to deny reciprocal compensation for such calls will eliminate competition for the ILECs' FX service. If the ILECs are permitted to characterize GNAPs' FX service as toll traffic and to apply switched access charges, such above-cost pricing ultimately would make the offering of competitive alternatives by CLECs infeasible. As this Commission has recognized:

> The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not. Likewise, the service expectations of the called party (*i.e.,* ISPs) would be undermined by imposing toll charges on such calls since customers of the ISPs would be precluded from reaching them through a local call.[9]

GNAPs believes there are compelling arguments for virtual NXX (VNXX) calls to be deemed local. Use of VNXXs does not impose additional transport costs on the ILECs so there is no cost justification for imposition of toll charges. Instead, such traffic should be deemed local for purposes of reciprocal compensation. GNAPs asserts that adopting its arguments would allow the originating carrier to define what is or is not a toll call, with the result that competition will continue to expand the size of the local calling areas.

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[9] Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043, D.99-09-029 at 25-26 (September 2, 1999).

GNAPs rebuts the ILECs' assertions that GNAPs' proposed FX service offering burdens the ILECs with added transport costs, saying that the ILECs' networks are not the only ones that provide transport for FX traffic. Therefore, GNAPs' FX service would generate the same costs that are involved with the delivery of any other local traffic to the POI.

GNAPs claims that assertions that ILECs are losing toll revenues by not being able to bill originating customers toll rates for calls to CLEC FX numbers is also incorrect. The very point of FX service is to provide end users a local calling number, and there is no reason to assume that this traffic would exist if it required a toll call. The Commission should also reject Pacific's proposal that CLECs be required to purchase a private line from Pacific in order to provide FX service, just as Pacific's retail FX customers do. This would retain Pacific's FX revenues at its current level by forcing CLECs to replace each dollar of FX revenue Pacific loses to a competitor. It is also inapplicable to CLEC network architecture because the dedicated line runs between two Pacific switches, but GNAPs typically serves an area using only one switch. Also, Pacific's proposal conflicts with the Act's goal of encouraging the introduction of new, innovative methods of providing service by new entrants, because it forces CLECs into provisioning service in the same manner as Pacific does. As this Commission recognized in D.99-09-029:

> For purposes of considering the issue of call rating, it is not necessary to deliberate at length over whether Pac-West's service conforms to some particular definition of "foreign exchange service" based upon specific provisioning arrangements. Although the Pac-West form of service differs from certain other forms of foreign exchange service in how it is provisioned, the ultimate end-user expectation remains the same, namely to achieve a local presence within an exchange other than where the customer resides.

> From the end-use customer's perspective, Pac-West's service is a competitive alternative to other forms of foreign exchange service. (D.99-09-029 at 23-24.)

GNAPs incurs termination costs to deliver an FX-like call to its customers. The current regulatory regime requires that GNAPs be compensated for those termination costs. The FCC recently acknowledged this in the Intercarrier Compensation NPRM, when it stated:

> [e]xisting access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC, or CMRS, to compensate the called party's carrier for terminating the call. Hence these interconnection regimes may be referred to as "*calling-party's-network pays*" (or CPNP). (Intercarrier Compensation NPRM at ¶ 9.)

Thus, the fundamental principle of the CPNP regime is that the party collecting the revenue for a call (*i.e.*, the originating party in the case of local exchange service) compensates the other party for use of its network. Therefore, GNAPs is lawfully entitled to recover its costs to terminate local exchange traffic originating on the ILECs' networks. The ILECs' position that GNAPs should compensate them in the form of access charges for GNAPs' FX-like traffic when the ILEC is collecting the revenue for these calls, turns the current CPNP regime on its head.

GNAPs asserts that its position is consistent with the FCC's ISP Remand Order, which does not excuse the ILEC from paying reciprocal compensation on GNAPs' FX-like traffic. As the Commission recognized in its order, all "telecommunications" traffic is subject to the reciprocal compensation provisions of the Act as set forth in 47 USC § 251(b)(5) and § 252(d)(2), whether the traffic is local or nonlocal. FX-like traffic is clearly telecommunications within the meaning of the Act.

Although Congress, in § 251(g), temporarily grandfathered preexisting federal compensation rules governing exchange access and information access traffic between LECs and IXCs or information service providers, there were no such rules with respect to virtual NXX traffic when the Act was passed. However, even if such preexisting compensation rules had existed, they would not be grandfathered by Section 251(g) because virtual NXX traffic is not "exchange access." By definition, GNAPs' FX-like service is not a toll service and is not included within the exemption from reciprocal compensation.

In its Supplemental Filing, GNAPs provided the following regarding disputed language in its ICA with Pacific relative to Issues 3 and 4:

- T&C, Definitions § 1.1.3 "Access Compensation": GNAPs' proposed modification removes language that Pacific could rely on to inappropriately apply access charges on certain types of traffic that GNAPs may exchange with Pacific.
- T&C, Definitions § 1.1.40 "Exchange Area": GNAPs' proposed modification clarifies that the party whose end-user originates the call will define that party's respective local calling area boundaries.
- T&C, Definitions § 1.1.56 "Foreign Exchange": GNAPs' proposed modification broadens the definition of FX service to incorporate the type of LATA-wide local calling service that GNAPs intends to offer in California.
- T&C, Definitions § 1.1.60 "Information Access Traffic": GNAPs provides a definition for internet-bound traffic consistent with the FCC's definition in FCC 01-131.
- T&C, Definitions § 1.1.64 "Interexchange Carrier": GNAPs clarifies that an IXC is a carrier that provides Telephone Toll Service, a service defined by the Communications Act. *See* 47 USC 153(48).

- T&C, Definitions § 1.1.68 "IntraLATA Toll Traffic": GNAPs replaces Pacific's language referring to a "normal" local calling area with language indicating that it is the originating carrier's local calling area that defines each party's local calling area.
- T&C, Definitions § 1.1.76 "Local Calls": GNAPs deletes Pacific's narrow definition of local calling areas and replaces that definition with language that clearly establishes that the originating carrier defines its own local calling area.
- T&C, Definitions § 1.1.78 "Location Routing Number": GNAPs removed ambiguities surrounding Pacific's definition and ensures that the ICA does not require that NXX codes be associated with any particular physical customer location, or used for the purpose of assessing whether a call is local or toll.
- T&C, Definitions § 1.1.79 "Local Service Provider": GNAPs removes "Local Service Provider" as a defined term because the term is duplicative of another already defined term in the agreement, "local exchange carrier."
- T&C, Definitions § 1.1.83 "Meet Point Billing": GNAPs removes language that Pacific could rely on to inappropriately apply access charges on certain types of traffic that GNAPs may exchange with Pacific.
- T&C, Definitions § 1.2.8 "Routing Point": GNAPs clarifies that NXX codes need not be associated with any particular physical customer location and should not be used for the purpose of assessing whether a call is local or toll.
- T&C, Definitions § 1.1.86 "Mutual Compensation": GNAPs broadens the definition of "local calls" to ensure that the definition includes calls that are compensable under federal and state law.
- T&C, Definitions § 1.1.137 "Wire Center": GNAPs clarifies that a serving wire center need not be utilized

solely for the purpose of transmitting so-called "local" calls.

- T&C, Definitions § 1.6.7 "Switched Exchange Access Service": GNAPs clarifies that switched exchange access service mirrors the federal statutory definition of this service. Specifically, switched exchange access service means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services, a service defined by the Communications Act. *See* 47 USC 153(16).
- Recip. Comp. § 3.2: GNAPs requires that parties treat "local call" and "local ISP calls" the same for mutual compensation purposes, at least until Pacific chooses to invoke the FCC's rate structure for ISP-bound calls.
- Recip. Comp. § 3.7: GNAPs removes any limitation on GNAPs' ability to utilize NXX codes to provide innovative service offerings, including LATA-wide local calling services.
- Recip. Comp. § 6.2: GNAPs eliminates Pacific's ability to impose access charges on those ISP-bound calls that GNAPs carries through its LATA-wide local calling service.
- Recip. Comp. § 17.1: GNAPs clarifies that the parties have agreed to specific contract language on important terms and conditions, but denies Pacific's ability to contractually bind GNAPs with related terms and obligations that are not specifically agreed to by both parties within the "four corners" of the document.
- Numbering § 2.2: GNAPs clarifies that NXX codes need not be associated with any particular rate center, and should not be used to identify the jurisdictional nature of traffic.
- Numbering § 2.3: GNAPs clarifies that NXX codes need not be associated with any particular physical customer

location and should not be used for the purpose of assessing whether a call is local or toll.

- Numbering § 2.7: GNAPs clarifies that NXX codes need not be associated with any particular physical customer location and should not be used for the purpose of assessing whether a call is local or toll.

In its Supplemental Filing, GNAPs provided the following regarding disputed language in its ICA with Verizon relating to Issues 3 and 4:

- T&C Glossary § 2.34: GNAPs provides that each party may define its own extended area service, a complement to language proposed elsewhere that rejects Verizon's attempts to impose its own local calling area boundaries upon GNAPs.
- T&C Glossary § 2.47: GNAPs provides greater clarity by defining IXCs as carriers that provide telecommunications services for a toll charge, rather than more abstract categories of service.
- T&C Glossary § 2.56: GNAPs removes one-sided language tying this definition to Verizon's legacy local calling area.
- T&C Glossary § 2.71: GNAPs removes language that ties rate center areas to exclusive geographical designations.
- T&C Glossary § 2.72: GNAPs simplifies this definition, tying it directly to applicable federal law definitions, and eliminates unnecessary restrictions on rate center point locations.
- T&C Glossary § 2.77: GNAPs simplifies this definition and eliminates language that ties routing points to the location of specific NPA-NXXs.
- T&C Glossary § 2.83: GNAPs increases clarity by tying this definition directly to the federal statutory definition.

- T&C Glossary § 2.91: GNAPs simplifies this definition by tying it directly to the applicable federal statutory definition and providing a more accurate distinction between intraLATA toll traffic and interLATA toll traffic.
- Interconnection § 6.2: GNAPs' proposed modification allows each party to measure and bill for traffic based upon its own defined local calling areas. GNAPs also eliminates redundant language rendered superfluous by the proposed modification of § 6.1.1.
- Interconnection § 7.3.4: GNAPs would eliminate language attempting to tie GNAPs' interconnection architecture and reciprocal compensation receipts to Verizon's legacy architecture, specifically, Verizon's Optional Extended Local Calling Area.
- Interconnection § 9.2.1: GNAPs eliminates Verizon's requirements that would require GNAPs to assign NPA-NXX codes for access toll connecting trunk group architecture to a related geographical rate center area, thereby defeating GNAPs' ability to provide VNXX and other services.
- Interconnection § 13.3: GNAPs eliminates Verizon language requiring GNAPs to adopt Verizon's rate center areas and rate center points, thereby limiting GNAPs' competitive options.

Pacific's Position

Pacific is willing to allow a non geographic assignment of an NPA-NXX code, or "virtual NXX" arrangement, as long as it is functionally equivalent to foreign exchange service. Pacific is willing to pay reciprocal compensation for calls with disparate rating and routing points that Pacific must transport between its calling areas for the CLEC as part of the CLEC's FX-like offering. But Pacific asserts it is entitled to receive tandem switching and transport compensation at TELRIC prices for transporting and tandem switching those calls.

By contrast, GNAPs proposes to create "LATA-wide" virtual NXXs that would provide LATA-wide free calling to GNAPs' customers. GNAPs does not propose to compensate Pacific for transporting those toll-free virtual NXX calls between Pacific's calling areas. Rather, Pacific would have to pay GNAPs reciprocal compensation.

Pacific sees an important difference between FX and intraLATA toll-free calling. Foreign exchange service "is a way to transfer the geographic rating point of the called party from one exchange to another." (D.00-09-029 at 13.) Even if the called party is physically located in a different exchange from where the call is rated, the relevant rating point is the rate center of the NXX prefix. GNAPs would change that so no longer would every NPA-NXX code correspond to a unique rate center, which is a designated geographical point. In a decision involving Pac-West Telecom, a CLEC, the Commission allowed Pac-West to implement an FX-like offering, but took care to explain that:

> The Pac-West arrangement is equivalent to foreign exchange service, not to intraLATA toll-free calling… Just as with other forms of foreign exchange service, the Pac-West arrangement relocates the rate center from which incoming calls are rated as either local or toll. Unlike intraLATA toll-free calling, however, the Pac-West arrangement does not permit a caller from *any* location to dial the ISP toll-free. The calling party would still incur toll charges if the call was made from a location whereby the rate center of the calling party was more than 12 miles from the rate center for the ISP's NXX prefix. (D.99-09-029 at 19, emphasis added.)

While GNAPs' witness Lundquist equates GNAPs' LATA-wide free calling proposal with a virtual FX arrangement, it is intraLATA toll-free calling, not FX. As the Commission recognized above, an intraLATA toll- free service is

one that permits a customer to dial toll-free from any location in the LATA, just as GNAPs proposes.

According to Pacific, the consequences of allowing GNAPs to implement LATA-wide calling are enormous. First, Pacific would lose intraLATA toll revenues from calls originated anywhere in the LATA to GNAPs' customers. Second, Pacific would lose any compensation from GNAPs for transporting those calls throughout the LATA, and the Commission would lose its authority to determine local calling areas.

Pacific states that GNAPs' proposal is directly opposed to decisions in which this Commission allowed ILECs to be reimbursed, through TELRIC-based charges for the use of their networks in FX-like arrangements.

> Whatever method is used to provide a local presence in a foreign exchange, a carrier may not avoid responsibility for negotiating reasonable intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local…A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities. (D.99-09-029 at 18.)

Consistent with earlier decisions, this Commission resolved the free-ride issue in Pacific's favor in the most recent AT&T / Pacific arbitration.

Also, GNAPs envisions a mirror-image compensation scheme for calls originated by GNAPs and terminated to Pacific or other LECs. Specifically, the compensation GNAPs is willing to pay to the terminating LEC would depend on whether the physical ends of the call are within GNAPs' local calling area. If so, GNAPs would pay reciprocal compensation, not access charges. According to Pacific, this aspect of GNAPs' proposal was never discussed in pleadings or

testimony. GNAPs' outward calling proposal became apparent to Pacific only when GNAPs had to make a Supplemental Filing.

Pacific's witness Mindell testified that Pacific does not preclude the development of LATA-wide NXX. However, NXXs must have geographically specific rate centers in order to identify the jurisdictional nature of the traffic for intercarrier compensation. Number portability also relies on a rating point for an NXX. Due to FCC requirements, currently numbers may only be ported within a rate center.

Pacific provided the following information regarding its specific contract language disputes with GNAPs relative to Issues 3 and 4:

- GT&C: Definition "Access Compensation": GNAPs removes the definition from the contract, saying that Pacific could rely on it to inappropriately apply access charges to certain types of traffic that GNAPs may exchange with Pacific. GNAPs does not explain what types of traffic Pacific might "inappropriately" apply access charges to, or why those charges would be inappropriate.
- GT&C: Definition "Exchange Area": GNAPs' proposed change goes beyond clarifying anything. The FCC gives state commissions, not CLECs, the authority to determine what geographic areas should be considered local areas.
- GT&C: Definition "Foreign Exchange": GNAPs' LATA-wide local calling is not equivalent to FX service. The service would be provided at Pacific's expense, and Pacific would have to provide virtually the entire service and would lose the toll or access revenue that it would otherwise receive. GNAPs' proposal is not consistent with Telcordia's Central Office Code Assignment guidelines or the FCC's number portability requirements.

- GT&C: Definition "Information Access Traffic": GNAPs' definition is not consistent with the FCC's definition in FCC 01-131.
- GT&C: Definition "Interexchange Carrier " (IXC): IXC is not defined in the Act or in the FCC's rules. Under GNAPs' proposed change, a carrier could apparently exempt itself from paying access charges simply by not including a "separate charge" for long distance service in its contracts with subscribers. This is another example of GNAPs' attempts to use its retail price structure to avoid its intercarrier compensation obligations.
- GT&C: Definition "IntraLATA Toll Traffic": In addition to displacing the state commission's authority to set local calling areas, GNAPs' modification provides that the originating carrier would define not just its own, but each party's local calling area. This would allow GNAPs to avoid paying access charges when an ILEC terminates an interexchange call for GNAPs.
- GT&C: Definition "Local Call": this should be rejected for the same reasons given in the definition for IntraLATA toll traffic.
- GT&C: Definition "Local Service Provider": Pacific agrees to this change.
- GT&C: Definition "Location Routing Number": The language GNAPs deletes "The purpose and functionality of the last four (4) digits of the LRN have not yet been defined but are passed across the network to the terminating switch" is accurate and factual.
- GT&C: Definition "Meet Point Billing": *See* Pacific's comments regarding "Access Compensation."
- GT&C: Definition "Mutual Compensation": The words GNAPs proposes to add are vague and ambiguous.
- GT&C: Definition "Routing Point": Pacific's definition of "Routing Point" is simple, straightforward, and is consistent with FX-like offerings previously allowed by

the Commission. It allows a CLEC customer to be assigned a number with different routing and rating points, provided those points are in the same LATA. GNAPs presented no testimony describing its proposed change. Also, GNAPs' language is more than just a definition. It creates many substantive rights and obligations of the parties. The proposed definition specifies that GNAPs can establish a single routing point within the entire SBC region.

- GT&C: Definition "Switched Exchange Access Service": The definition to which GNAPs objects pertains only to Ameritech. GNAPs' proposed modification is irrelevant and should be rejected.
- GT&C: Definition "Wire Center": Pacific's language is a workaday description of a serving wire center. This is a minor modification, but it is unnecessary since Pacific's definition makes no attempt to jurisdictionalize calls.
- Recip. Comp.: § 3.2: Pacific agrees that calls will not be handled differently based on whether GNAPs' customer is an end user or an ISP. GNAPs refuses to recognize that Pacific may be entitled to exclude FX calls from reciprocal compensation after that issue is finally decided by the CPUC, and excludes Pacific's ability to seek reimbursement for long-haul traffic.
- Recip. Comp.: § 3.7: Pacific allows GNAPs to provide Virtual NXX service with the same limitations applied by the Commission in other proceedings. *See* Recip. Comp. § 3.2 and Numbering, § 2.2.
- Recip. Comp.: § 6.2: GNAPs' LATA-wide local calling services, which denies the ILEC any compensation for performing the underlying service, is contrary to law and public policy.
- Recip. Comp.: § 17.1: Pacific's language provides that specified portions of the General Terms and Conditions are legitimately related to each interconnection, service and network element provided under the ICA. By

deleting virtually the entire clause, GNAPs would make it that virtually none of the GT&Cs is applicable to the rest of the agreement, raising serious issues of interpretation and construction.

- Numbering: § 2.2: Pacific recognizes that the Commission has allowed NXX codes with different rating and routing points, but the Commission has also said that an NXX code must be associated with a rate center, so it is untrue that "NXX codes need not be associated with any particular rate center."
- Numbering: § 2.3: This should be rejected for the same reasons given in § 2.2 above. Also, GNAPs fails to explain how it would comply with the FCC's number portability requirements.
- Numbering: § 2.7: This should be rejected for the same reasons given in § 2.2 above. In addition, GNAPs fails to explain why it has deleted the NXX migration provision, which simply minimizes the number of telephone numbers that must be ported between networks.

Verizon's Position

GNAPs attempts to hoodwink the Commission into making a ruling far larger than this two-party contract arbitration. Nothing in Verizon's proposed contract prohibits GNAPs from defining its own local calling area for purposes of its retail offerings. The real dispute is one of intercarrier compensation. Because access charges are generally higher than reciprocal compensation rates, GNAPs seeks to avoid paying access charges by defining away toll calling.

GNAPs downplays its proposal to eliminate Verizon's right to charge access rates as simply a "consequence of a competitive market." By arguing for reciprocal compensation for what has always been designated as a toll call, GNAPs is attempting to take implicit universal service support flows out of the

system and give them to their shareholders and / or their customers, thus making no state-side contributions to the support of universal service.

Both the Maryland and Pennsylvania Commissions have addressed this issue and rejected using the CLEC-defined local calling areas as the basis for reciprocal compensation.

According to Verizon, another troubling aspect of GNAPs' proposal is its admitted effect on changing the rate Verizon customers pay to Verizon for calls between local calling areas within a LATA whenever GNAPs unilaterally determines that the applicable local calling area should be larger than Verizon's. GNAPs may define its own local calling area for its customers; however, GNAPs should not be permitted to dictate Verizon's local calling areas for its own customers. Moreover, under GNAPs' proposal to nullify existing access charges, economic principles would require Verizon to align its rates to reflect GNAPs' local calling areas. Verizon asserts that if addressed at all, this issue should not be considered within the confines of a two-party arbitration, but in a generic proceeding where all interested parties can participate and be heard.

Verizon asserts that GNAPs should not be permitted to assign its customer NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides. GNAPs wants to treat VNXX calls as local for purposes of reciprocal compensation. Verizon urges the Commission to reject GNAPs' effort to game the system to its advantage.

The local / toll distinction recognizes that a customer's telephone number serves two separate but related functions: proper call routing and rating. In fact, each NXX within an NPA is assigned to both a switch and a rate center. As a result, telephone numbers provide the network with specific information necessary to route calls correctly to their intended destinations. At

the same time, telephone numbers also identify the exchanges of both the originating caller and the called party to provide for the proper rating of calls. It is the latter function that is at the heart of the VNXX issue.

GNAPs wants to assign NXX codes to its customers who do not reside in the rate centers to which those NXX codes are associated. The only reason to assign NPA-NXX codes in this manner is to arbitrage existing routing and billing systems. The switch is completely reliant upon the LERG and the geographic assumptions underlying the LERG for proper routing and rating information. Thus, Verizon has no independent way of verifying whether a particular call on which GNAPs is seeking reciprocal compensation is actually a local call made between callers in the same local calling area or whether it only appears to be a local call because of the Virtual NXX assignment.

According to Verizon, the financial benefit GNAPs stands to gain from its Virtual NXX proposal is telling. Not only would GNAPs collect reciprocal compensation for each purported "local" minute but also it would be able to offer telephone toll services at exchange service prices.

Despite GNAPs' effort to redefine what traffic is local and what traffic is not, the definitional distinction between local and toll rating is specifically codified in 47 USC § 153. Consequently, the Act reserves the historical distinction between local calls within an exchange area and toll calls traversing exchange boundaries.

Verizon asserts that this Commission and others that have considered the Virtual NXX issue have rejected GNAPs' approach. The Commission made it clear in D.99-09-029 that CLECs must pay appropriate compensation for their NXX assignment choices. The Commission's decision is clear that while a CLEC

may assign NXX codes however it wants, it is not permitted to game the system by avoiding the payment of appropriate fees associated with Virtual NXX calls.

The Commission addressed the "fee avoidance" issue again in the Level 3 arbitration with Pacific. In that case, the Commission rejected Level 3's arguments that it should not have to pay Pacific for use of Pacific's facilities involved with VNXX calls. Level 3 requested rehearing on the lawfulness of the Commission's findings about the deployment of NXX codes, and the Commission upheld its earlier ruling noting that the "record shows that Level 3's assignment of VNXX codes from one rate center to customers that are physically located in another rate center involves Pacific's provision of foreign exchange ("FX") service, not 'local' service. Accordingly, Pacific not only had a right to be compensated for the use of its facilities, but also had no obligation to pay reciprocal compensation to Level 3 for these "non local" calls.

Verizon states that the overwhelming majority of state commissions to consider the issue have held that reciprocal compensation is not due on Virtual NXX because that traffic does not physically terminate in the same local calling area in which it originates. Those state commissions include: Illinois, Pennsylvania, Texas, South Carolina, Tennessee, Georgia, Maine, and Missouri. Furthermore, several of these other state commissions have explicitly determined that access charges, rather than reciprocal compensation, should apply to VNXX traffic. The Tennessee Commission, for example, stated that "calls to an NPA / NXX in a local calling area outside the local calling area where the NPA / NXX is homed shall be treated as intrastate interexchange toll traffic for

purposes of intercarrier compensation and, therefore, are subject to access charges."[10]

Verizon rebuts GNAPs' claim that Verizon does not accept symmetry between the Virtual NXX scenario and the FX scenario. While the two services are similar, there are fundamental differences. When Verizon offers FX service, the customer agrees to pay a monthly charge to Verizon for transporting calls that would otherwise be toll calls to the customer and for which Verizon would normally bill the originating party. Furthermore, unlike real FX service, Virtual NXX does not use lines dedicated to a customer for transporting the call between rate centers.

Verizon provides the following information to support its proposed language in the ICA relating to Issues 3 and 4:

- T&C Glossary § 2.56: Verizon's definition for "Measured Internet Traffic" identifies traffic that is subject to the interim compensation regime adopted by the FCC. GNAPs deletes references and descriptions of Verizon's local calling areas and also to 1+ calls.
- Glossary § 2.71 "Rate Center Area": GNAPs' edit appears to be based on the incorrect assumption that the term "LEC" in the ICA means Verizon only. That is not correct. The term "LEC" includes all LECs, not just incumbents, consistent with the Act's definition. For purposes of the ICA, it is necessary to use the word "exclusive" in order to clarify geographic areas identified by Verizon and Verizon alone, as opposed to geographic areas that may have been defined by other LECs as well.

[10] BellSouth / Intermedia Arbitration Order at 44.

- Glossary § 2.72 "Rate Center Point": There is no need to replace the terms "Telephone Exchange Service" and "Toll Traffic" with the broader term "Telecommunications Service" because the calls being measured for purposes of this definition are Telephone Exchange Service and Toll Traffic. GNAPs' edits serve no purpose and would confuse an otherwise clear definition.
- Glossary § 2.77 "Routing Point": GNAPs' proposed change would permit the Routing Point to be in a different LATA than the rate center to which the NPA / NXX is assigned. This is contrary to GNAPS' recognition that it must have at least one physical POI per LATA.
- Glossary §§ 2.47 and 2.83 IXC and Switched Access Exchange: Contrary to GNAPs' proposed language, there is nothing that requires an IXC to impose a toll charge for its services. GNAPs would significantly revise the definition of "Switched Exchange Access" and provide a much less precise definition, which leaves the provision unworkable.
- Glossary § 2.91 Toll Traffic: GNAPs' proposed change to this definition ignores existing rules regarding toll traffic, instead permitting GNAPs to define an interLATA toll call as something else by virtue of whether a carrier bills an end-user a toll charge. GNAPs' proposed change makes the definition circular, and, therefore, meaningless.
- Interconnection § 9.2.1: GNAPs' proposed language would result in misrouted and uncompleted terminating long distance calls. Verizon's proposed language avoids this problem.
- Interconnection § 13.3: GNAPs' edits would be contrary to FCC regulations. The FCC's local number portability guidelines require that companies limit porting of telephone numbers to the same rate center. Verizon's proposed language captures the FCC's obligations.

Discussion

The quick answer to Issue 3 is that, of course, GNAPs can define local calling area boundaries for its customers. Other CLECs have instituted LATA-wide calling for their customers. However, that question becomes more difficult to answer once it becomes clear that what GNAPs wants is to define the local calling areas of the ILECs with which it interconnects.

GNAPs is correct that the FCC leaves to the states the right to establish local calling areas within its boundaries. While that right rests with the Commission, the Commission has refused in other arbitrations to set new policies that impact on other entities that are not parties to the ICA. Under our rules,[11] other entities that are not parties to an ICA are precluded from participating in an arbitration proceeding before this Commission. Since that is the case, they would have no voice in setting the local calling areas for the ILECs. I agree with Verizon that this type of decision should not be made in the context of two-party arbitrations, but should be the subject of a Commission rulemaking where all interested parties have an opportunity to be heard. Therefore, I find that while GNAPs can establish what the local calling area can be for its own customers, it may not unilaterally set the local calling areas for ILEC customers. Since Issue 3 is resolved in the ILECs' favor, Issue 4 then relates only to GNAPs' own customers.

In its comments on the DAR, GNAPs indicates that it wants to define the calling areas for its own customers. According to GNAPs, the outcome in the DAR imposes restraints on GNAPs' ability to define calling areas that are larger

[11] Resolution ALJ 181, October 5, 2000.

than the ILECs' because of the economic burdens of transport costs and access charges. GNAPs asserts that all intraLATA traffic exchanged between GNAPs and the ILECs should be subject to cost-based "local" compensation under § 251(b)(5) and should not be subject to intrastate access charges. No precedent exists which prevents GNAPs from determining its LATA-wide local calling area. In fact, GNAPs points out that the FCC has permitted the states to determine what geographic areas should be considered "the local area" for purposes of applying reciprocal compensation obligations under § 251(b)(5). GNAPs points out the artificial nature of current local calling areas, which are legacies of an ancient telephone network topology. According to GNAPs, the arbitrator failed to realize that under § 251(b)(5), the intraLATA traffic exchanged between the ILECs and GNAPs should never be subject to intrastate access charges where GNAPs defines the local calling area as LATA-wide.

GNAPs states that in its ISP Remand Order, the FCC concludes that reciprocal compensation applies to all telecommunications traffic that is not ISP-bound or subject to toll charges. The FCC explains that § 251(g) of the Act carves out certain categories of traffic, namely exchange access, information access, and exchange services--from the reciprocal compensation requirement. According to GNAPs, all traffic is subject to reciprocal compensation unless it falls into the specific exceptions defined by the FCC. This means that traffic that is not ISP-bound (information access) and is not subject to a toll charge (exchange access and exchange services for such access) is subject to reciprocal compensation. According to GNAPs, this section of the DAR is inconsistent; if the call is considered local for purposes of intercarrier compensation, then such compensation already includes the costs of switching and termination.

Based on the arbitrator's premise that VNXX calls are to be considered local, GNAPs concludes that access charges do not apply to VNXX calls. If the intent of the DAR is to impose access charges, it is in violation of the Act. Those calls cannot be subject to access charges because exchange access only applies to toll calls, and GNAPs does not impose a separate charge on its end-users for its FX-like service.

In its Comments on the DAR, Pac-West asserts that the imposition of transport and tandem switching charges (which Pac-West calls "Call Origination Charges") on disparately rated and routed traffic originated by an ILEC's customer and delivered to a CLEC with a single POI in that LATA destroys the fundamental economic effectiveness of the single POI policy. The single POI is specifically designed to allow new CLECs to compete without the need to construct local networks as geographically disbursed as the ILECs. According to Pac-West, those transport and tandem switching charges are harmful to competition in the local services market. Pac-West also asserts that the use of TELRIC-based rates is legally erroneous because the Commission has admitted that it has not yet determined the appropriate level of such charges, and has an open docket established specifically to make that determination.

Pac-West also states that the DAR improperly decides industry-wide issues in a private arbitration. Individual arbitrations, which involve only the two carriers that are parties to the ICA being arbitrated, are an unfair venue in which to make policy determinations, especially where the policy in question has extremely different impacts on parties denied participation rights by the Commission's rules. Instead, the status quo should be maintained until the fair and open rulemaking process is completed and then implemented on an industry-wide basis.

Furthermore, Pac-West asserts that both Pacific and the DAR rely upon the outcome in other arbitrations as a basis for the decision here to permit imposition of transport and tandem switching charges. Pac-West filed its Response to Pacific's Application for Arbitration on April 23, 2002, and submitted evidence that demonstrates several reasons why the transport and tandem switching charges should not be imposed on Pac-West. The evidence presented in that case is relevant to the same question posed in this arbitration, but much of that evidence is entirely lacking from the record in this arbitration. CLECs are in vastly different circumstances, and the DAR errs in relying on the outcome in previous arbitrations for justifying the position here.

GNAPs shares Pac-West's view that the DAR erroneously relied on determinations from other arbitrations proceedings. According to GNAPs, this is a violation of law; rulings are to be made based on the record evidence available. Since GNAPs was excluded from participating in prior arbitration cases by Commission rules, the determination made in those cases should not apply to GNAPs.

Contrary to GNAPs and Pac-West's claims, the DAR was developed based on the record evidence of this proceeding. The DAR simply states that particular outcomes, which were derived from the record before us, were consistent with other arbitrations settled by the Commission. The Commission wants to ensure that arbitration outcomes are consistent, if it is presented with the same set of facts.

In its Comments, GNAPs asserts that the DAR is silent on the issue of whether access charges can be imposed on VNXX traffic. The DAR indicates that GNAPs must compensate the ILECs for transport and tandem switching to carry that VNXX traffic. GNAPs states that the DAR appears to allow VNXX traffic to

be considered "local" for purposes of intercarrier compensation, yet the arbitrator still holds GNAPs responsible for costs on the ILECs' side of the POI.

In resolving Issue 4, I reiterate that the issue, as framed by the parties, is narrow in scope. It asks whether GNAPs can assign VNXX codes to its customers. In other words, it does not apply to the ILECs' customers. In its Comments on the DAR, Pac-West indicates that it is referring to "disparately rated and routed traffic originated by an ILEC's customer and delivered to a CLEC with a single POI in that LATA…" (Pac-West Comments at 2.) I have stated above that I will not alter the ILECs' local calling areas in an arbitration proceeding, rather, this should be the subject of a generic rulemaking where all interested parties may participate fully. It appears that Pac-West is broadening the issue beyond what GNAPs is requesting because in its Comments on the DAR, GNAPs itself states, "What Global [GNAPs] wants is to define the calling areas for *Global's customers.*" (GNAPs' Comments at 17.) Since GNAPs is the party to this arbitration, we rely on what GNAPs is requesting.

The simple answer to Issue 4 is that GNAPs is entitled to specify the local calling area for its own customers. The difficult part comes in determining whether GNAPs must pay the ILECs for transporting its FX-type traffic.

I determined in Issues 1-2 above, that, in the case of any conflict between Federal and state rules, Federal rules would apply in an arbitration under Section 252. The FCC has addressed VNXX traffic specifically in its Intercarrier Compensation NPRM. Paragraph 115 in the NPRM requests comment on the specific issues before us in Issue 4. The pertinent portions of ¶ 115 read as follows:

> We seek comment on the use of virtual central office codes (NXXs), and their effect on the reciprocal compensation and transport obligations of interconnected LECs. …we

> seek comment on the following issues: (1) Under what circumstances should a LEC be entitled to use virtual NXX codes? (2) If LECs are permitted to use virtual NXX codes, what is the transport obligation of the originating LEC? (3) Should the LEC employing the virtual NXX code be required to provide transport from the central offices associated with those NXX codes?

This paragraph was taken from an NPRM, so the FCC is not adopting rules, but is asking for comments, and has not yet ruled on the proper treatment of VNXX traffic. Once the FCC issues rules on this specific issue, the ICAs shall be amended, under the Change in Law provisions, to reflect the FCC's rules. However, in the meantime, the FCC has provided some guidance which will assist in resolving the issue of whether GNAPs should be required to pay transport and tandem switching charges for its disparately-routed traffic. Paragraph 115 demonstrates that the FCC believes that VNXX traffic is subject to reciprocal compensation obligations; the only open issue is the transport obligation.

Section 51.703(b), which was cited above in connection with Issue 1-2, and the FCC's Kansas / Oklahoma 271 Order as well as ¶ 112 in the Intercarrier Compensation NPRM make it clear that GNAPs cannot be required to pay for transport on the ILECs' side of the POI. There is currently no exclusion for the VNXX traffic.

This Commission has addressed the issue of VNXX codes and determined that while carriers may set disparate rating and routing points, ILECs are entitled to fair compensation for the use of their facilities in the transport of FX traffic.

The Commission order states that the appropriate place to determine the appropriate form of intercarrier compensation is through ICAs negotiated in

conformance with the Act. However, this determination by the California Commission is at odds with the FCC's orders (cited above) which bar ILECs from charging CLECs for transport of traffic on the ILECs' side of the POI. There is no exclusion for VNXX traffic, so that traffic would be covered by § 51.703(b).

In conclusion, GNAPs may implement disparate rating and routing points for its own customers, and is not required to compensate Pacific and Verizon for use of the ILECs' transport and tandem switching networks to carry that FX-type traffic. CLECs may not be assessed intrastate access charges or transport and tandem switching at TELRIC prices. However, I remind GNAPs that NXX codes must be associated with a rate center to identify the jurisdictional nature of the traffic for intercarrier compensation purposes. This does not prevent GNAPs from assigning NXXs that are not geographically correlated to the service area, merely that when assigning NXXs, GNAPs must assign these to a particular rate center.

In its Comments on the DAR, Pacific indicates that if GNAPs defines its local calling area as the entire LATA for its own customers, it results in an outcome that whenever GNAPs terminates a call that originated anywhere in GNAPs' local calling area to a LEC within GNAPs' local calling area, GNAPs would pay the terminating carrier reciprocal compensation rather than access charges. However, the same call carried in the opposite direction might incur access charges from GNAPs, not reciprocal compensation. Pacific states that the FAR should make it clear that, not only may GNAPs not offer LATA-wide local calling to end-users by defining its local calling area as the entire LATA, GNAPs may not unilaterally determine the terms of compensation between itself and other carriers by its designation of local calling areas. Pacific says this clarification would provide the rationale for the arbitrator's disposition of

disputed contract language between GNAPs and Pacific, e.g., Definitions §§ 1.1.3 and 1.1.40. I reject Pacific's proposal. GNAPs has the option of selecting a LATA-wide local calling area. Due to the difference in calling areas for GNAPs and the two LECs, the compensation arrangements will differ, depending on which carrier's customer initiates the call. That is a sign of a competitive marketplace, where carriers can differentiate the product they offer to their customers.

In the following section, I dispose of all the disputed contract language between GNAPs and Pacific, relating to Issues 3 and 4:

- T&C, Definitions § 1.1.3: GNAPs' position is adopted, and the definition for "Access Compensation" will not be included in the ICA. I have adopted GNAPs' LATA-wide calling regime for its customers, so GNAPs will not be required to pay access compensation for calls within the LATA.
- T&C, Definitions § 1.1.40: GNAPs' proposed language is adopted. GNAPs can define the local calling area for its customers.
- T&C, Definitions § 1.1.56: GNAPs' definition of FX is adopted. Pacific's definition would have included FX-like services, such as VNXX calls. While VNXX calls are FX-like, they are treated as local calls.
- T&C, Definitions § 1.1.60: The parties disagree as to whether GNAPs' definition of "Information Access Traffic" is consistent with the FCC's definition in FCC 01-131. In its Comments on the DAR, Pacific indicated that it opposes GNAPs' definition because it is not supported by the law. Pacific believes the definition was crafted by GNAPs to escape paying Pacific access charges when Pacific terminates long distance traffic for GNAPs. GNAPs did not provide comments in support of its definition. Pacific's position is adopted, and GNAPs' proposed definition is deleted from the ICA.

- T&C, Definitions § 1.1.64: Pacific's definition is more exact and will be adopted.
- T&C, Definitions § 1.1.68: GNAPs' proposed language is adopted. GNAPs' definition incorporates the LATA-wide calling concept that I adopted for GNAPs.
- T&C, Definitions § 1.1.76: GNAPs' proposed language is adopted. Local calls are defined by the originating carrier's local calling area. Pacific's definition would have used the same definition of a local call for both Pacific and GNAPs, which is not appropriate, since I have adopted LATA-wide calling for GNAPs.
- T&C, Definitions § 1.1.78: Pacific's proposed language is adopted. The language GNAPs deletes, namely the last four digits of the Location Routing Number, have nothing to do with the VNXX issue.
- T&C, Definitions § 1.1.79: GNAPs' proposed language is adopted. Pacific agreed to the change and presented no information as to why it should not be adopted.
- T&C, Definitions § 1.1.83: GNAPs' proposed language is adopted. See "Access Compensation" above.
- T&C, Definitions § 1.1.86: Pacific's proposed language is adopted. GNAPs' proposed language is vague.
- T&C, Definitions § 1.1.137: Pacific's proposed language is adopted. Pacific's definition has nothing to do with the classification of particular calls as local. As Pacific says, its definition makes no attempt to jurisdictionalize calls.
- T&C, Definitions § 1.2.8: GNAPs' proposed language is adopted. GNAPs' definition reflects the fact that it may use disparate rating and routing points within the same LATA.
- T&C, Definitions § 1.6.7: Pacific's proposed definition is adopted. Since that particular definition applies only in Ameritech states, there is no need to change it in an ICA between GNAPs and Pacific.

- Recip. Comp. § 3.2: GNAPs' proposed language is adopted. In order to qualify as local traffic, the originating and terminating end-users do not have to be physically located in the same ILEC Local Exchange Area. Such FX-type traffic is subject to reciprocal compensation.
- Recip. Comp. § 3.7: Pacific's proposed language is rejected, for the same reasons discussed in § 3.2 above. These FX-type calls are to be treated as local calls for intercarrier compensation purposes.
- Recip. Comp. § 6.2: GNAPs' proposed language is adopted. Pacific's language includes the statement that rating and routing is in accordance with the terminating parties' exchange access tariffs. GNAPs is not constrained by Pacific's tariff rules.
- Recip. Comp. § 17.1: Pacific's proposed language is adopted. As Pacific says, its language provides that specified portions of the General Terms and Conditions are legitimately related to each interconnection, service, etc., provided under the ICA. By deleting virtually the entire clause, GNAPs would have virtually none of the GT&C be applicable to the rest of the agreement.
- Numbering §§ 2.2, 2.3, 2.7: GNAPs' proposed language in § 2.2 is adopted. It restates that GNAPs' may assign NXXs without regard to the customer's physical presence in the rate center. GNAPs' position in § 2.3 is adopted. This merely restates § 2.2. Pacific's language would preclude disparate rating and routing. However, GNAPs must ensure that its system of assigning NXX codes is in compliance with the FCC's number portability requirements. Pacific's proposed language in § 2.7, which deals with the process for migrating an NXX from one carrier to another, is adopted.

In the following section, I dispose of all the disputed contract language between GNAPs and Verizon, relating to Issues 3 and 4:

- T&C Glossary § 2.34: GNAPs' proposed language, which makes it clear that the party providing service to a customer defines the customer's local calling area, is adopted.
- T&C Glossary § 2.47: Verizon's definition for IXC is adopted. Whether or not a carrier offers toll service for a specific charge is not the defining factor for an IXC.
- T&C Glossary § 2.56: GNAPs' proposed language is adopted. Verizon's language is problematic because it defines traffic from either carrier in terms of Verizon's local calling area. GNAPs has the right to define its own local calling area.
- T&C Glossary § 2.71: GNAPs' definition for "Rate Center Area" is adopted. Verizon's definition is so limited that it would appear to exclude VNXX traffic.
- T&C Glossary § 2.72: Verizon's proposed definition is clearer and will be adopted.
- T&C Glossary § 2.77: Verizon's proposed language is adopted. The routing point must be within the LATA in which the NPA-NXX is located.
- T&C Glossary § 2.83: Verizon's definition, which is more precise, is adopted.
- T&C Glossary § 2.91: Verizon's proposed language is adopted. It is more precise, and eliminates GNAPs' requirement that toll traffic relate to whether or not the carrier imposes a toll charge. Since GNAPs has LATA-wide local calling, all calls from GNAPs customers to another point within the LATA will be subject to reciprocal compensation, and such traffic will not be treated as intraLATA toll traffic, for purposes of compensation.
- Interconnection § 6.2: Verizon's proposed language is adopted, with modification. It explains the use of Traffic Factors, which should be a helpful tool in administering the ICA. However, GNAPs language, which indicates that the parties will supply Traffic

Factor information "in accordance with their defined calling areas" is adopted. This reflects the fact that GNAPs is adopting LATA-wide local calling, and that needs to be taken into account in supplying Traffic Factors. The reference to applicable tariffs is appropriate. That tariff section explains the measurement of billing minutes for toll traffic.

- Interconnection § 9.2.1: Verizon's proposed language is adopted. If GNAPs chooses to subtend a Verizon access tandem, its NPA-NXX codes must subtend that access tandem for calls to be routed properly.
- Interconnection § 13.3: GNAPs' proposed language is adopted. GNAPs cannot be required to adopt the same rate center area and rate center points as Verizon.

C. Issue 5

Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?

GNAP's Position

The proposed ICA submitted by Verizon acknowledged that GNAPs has a right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised. GNAPs believes that the language proposed by Verizon is not adequate because it does not directly pertain to the ISP Remand Order as the ICA does not deal with compensation for ISP bound traffic. If the ISP Remand Order is overturned, Verizon acknowledges that GNAPs should have the right to demand renegotiation, and, if necessary, further arbitration. The ICA should clearly state this in light of the pending decision on this matter.

In its Supplemental Filing, GNAPs provided the following regarding disputed language in its ICA with Verizon relating to Issue 5:

- T&C Glossary § 2.42 "Internet Traffic": GNAPs limits the definition of Internet traffic to exclude CMRS traffic and traffic that passes through the Internet but not between the parties.
- T&C Glossary § 2.74 "Reciprocal Compensation": GNAPs simplifies this definition by tying it directly to the applicable federal statutory provision.
- T&C Glossary § 2.75 "Reciprocal Compensation Traffic": GNAPs removes non-reciprocal language tying this term to Verizon's network architecture and eliminates the overly narrow definition of toll traffic, and makes it clear that current exclusions from reciprocal compensation may be altered by changes in applicable law.
- T&C § 4.7: GNAPs clarifies that Verizon's ability to discontinue benefits to GNAPs as a result of regulatory change is limited to final and non-appealable legislation and that any such discontinuance must be consistent with state and federal common carrier obligations.
- Additional Services § 5.1 "Voice Information Service Traffic": GNAPs eliminates an exclusion of this traffic from reciprocal compensation provisions, clarifies this definition, and removes several exclusions from the definition.
- Interconnection § 6.1.1: GNAPs clarifies the definition of "Traffic Rate" for billing purposes and explicitly provides for the possibility of a future change in law.
- Interconnection § 6.2: GNAPs' proposal would allow each party to measure traffic, and bill the other party, based upon its own defined calling areas. Although a carrier may market different calling area coverage to end-users, for purposes of intercarrier compensation, it would be inconsistent with the law to allow a carrier to decide what it will pay for use of the other carrier's network. Existing intercarrier compensation schemes may change over time, but they should change

uniformly and not piecemeal through ICAs. GNAPs' proposed change would have the parties bill each other for traffic based on the other party's definition of a defined calling area. The billing party would be unable to use CPN [Calling Party Number] to "jurisdictionalize" the call; instead, it would have to rely on factors provided by the other party.

- Interconnection § 7.2: GNAPs eliminates any possible contention by Verizon that the ICA provides for additional charges for termination from the IP to the customer of Reciprocal Compensation traffic delivered from either party's IP.
- Interconnection § 7.3: GNAPs' proposed amendments recognize the possibility of future changes of law with respect to whether traffic is Internet Traffic or Reciprocal Compensation Traffic for purposes of reciprocal compensation. It eliminates overly restrictive language regarding what comprises reciprocal compensation traffic.
- Interconnection § 7.4: GNAPs' proposed modification eliminates superfluous language that restates current federal law.

Verizon's Position

The parties do not dispute that the ICA shall be subject to future changes in the law. The only dispute is whether the ICA should treat changes to the ISP Remand Order differently than other changes in law. GNAPs has not presented any evidence as to why changes in the ISP Remand Order should be treated any differently from other changes. GNAPs itself has accepted Verizon's standard "change of law" language, and has not explained why it is inadequate for purposes of revising the parties' ICA in the event the ISP Remand Order is someday reversed or otherwise modified. GNAPs has provided no legitimate reason to carve out the ISP Remand Order from all other applicable law.

GNAPs' witness Lundquist specifically admitted that the "bill and keep" regime established in the ISP Remand Order governs compensation for Internet-bound traffic exchanged between the parties.

Verizon provides the following arguments for its proposed language in the ICA relating to Issue 5:

- T&C Glossary § 2.42: GNAPs has provided no explanation in support of its edits to the definition of Internet Traffic which expressly excludes any traffic to a CMRS provider and that adds a reference to traffic between the parties.
- T&C Glossary § 2.74: Verizon's definition of Reciprocal Compensation embodies the ISP Remand Order's intercarrier compensation obligations as they relate to Internet-bound traffic. Verizon's proposed definition is consistent with the FCC's ruling and captures the two key requirements for traffic eligible for reciprocal compensation. Verizon's definition is necessary to clarify what traffic is subject to reciprocal compensation and what traffic is not. GNAP's definition is too limited in the wake of the ISP Remand Order. At a minimum, Verizon is entitled to language specifying that reciprocal compensation provides for the recovery of costs incurred for the transport and termination of "Reciprocal Compensation Traffic" as defined and that Verizon's proposed terms accomplish this end.
- T&C Glossary § 2.75: GNAPs proposes that the determination of whether traffic is exchange access or information access—or whether reciprocal compensation is due on such traffic—should be based on the local calling area of the carrier originating the call. Such a proposal would produce a situation where calls between the same end-users would be classified as access or reciprocal compensation traffic depending on who originated the call. This would be unworkable but also contrary to the FCC's clear intent that state

commissions have the authority to determine local calling areas. GNAPs edits to §2.75 also change the description of toll traffic within the "Reciprocal Compensation Traffic" definition by deleting a reference to calls originating on a 1+ presubscription basis. GNAPs' also adds a phrase relating to change in law provisions which seeks to circumvent the "change in law" provisions set forth in §§ 4.5 and 4.6 of the General Terms and Conditions.

- Additional Service § 5.1: Voice information services are not limited to those where providers assess a fee, whether or not the fee appears on the calling party's telephone bill. Indeed, since Verizon may not bill for such services, many providers typically charge the calling party's credit card bill when assessing charges. GNAPs also deletes the reference to "intraLATA switched voice traffic." For purposes of this ICA, the voice information service traffic necessarily must be intraLATA traffic. If it is not, then the traffic would have to be deemed exchange access. GNAPs' edits do not take this into account. Also, despite GNAPs' edits to the contrary, Voice Information Service Traffic is like Internet traffic, and is not subject to reciprocal compensation. On the contrary, both Verizon and GNAPs recoup their costs via arrangements with the third party service / content provider.
- Interconnection § 6.1.1: GNAPs deletes the reference to the ISP Remand Order in the portion of the section that describes types of traffic and application of the appropriate traffic rates. GNAPs also conditions application of rates only to those minutes where CPN is passed, without providing any terms for what rate application should apply to minutes where CPN is not passed. Neither the FCC's Local Competition Order nor its ISP Remand Order included such limitations.

Discussion

As Verizon states, the parties have agreed to the "change in law" provisions in §§ 4.5 and 4.6 of the ICA. That provision should cover any and all changes in law relating to specific provisions in the agreement. However, GNAPs raises a valid point that the language proposed by Verizon is not adequate because it does not directly pertain to the ISP Remand Order because the ICA does not deal with compensation for ISP-bound traffic. GNAPs' proposal to include specific change-in-law language relating to the ISP Remand Order is adopted. The issue of compensation for ISP-bound traffic is central to the disputes between the parties, and I need to ensure that any change in law relating to that specific FCC order is reflected in the ICA.

In the following section, I dispose of all the disputed contract language between GNAPs and Verizon, relating to Issue 5. In some cases, the disputed contract language parties identified did not appear to be directly related to the narrow issue framed in Issue 5 but, in any event, I have resolved all contract language the parties indicated was in dispute, regardless of the relevance to Issue 5.

- T&C Glossary § 2.42: Verizon's language is adopted. GNAPs does not explain why it deleted the reference to CMRS providers.
- T&C Glossary § 2.74: Verizon's proposed language is adopted, with one modification. To make this definition perfectly clear, Verizon shall replace its reference to "the FCC Internet Order" with a cite to the specific FCC order.
- T&C Glossary § 2.75: GNAPs' proposed language is adopted. It reflects the fact that reciprocal compensation obligations are not based on Verizon's local calling areas, since GNAPs is allowed to have LATA-wide calling. As described above, reciprocal compensation traffic does include FX traffic that does

not originate and terminate within the same Verizon local calling area. In its Comments on the DAR, Verizon indicates that FX-type traffic should not be defined as "reciprocal compensation traffic." I do not agree with Verizon's position. An FX-type call is rated as a local call, and reciprocal compensation should apply. GNAPs' language reflects that outcome. The issue of whether the originating carrier should determine the local calling area was resolved in Issues 3-4.

- T&C § 4.7: Verizon's proposed language is adopted. This Commission has previously denied the request in an arbitration that parties need implement only "final and non appealable" orders and decisions. An order of this Commission or the FCC or the relevant court is effective unless stayed, and must be implemented by the parties. This is consistent with the outcome on Issue 13. GNAPs' proposed language is adopted for the final sentence of this section. That language says that Verizon will provide GNAPs with 30 days' prior written notice of any discontinuance of service, unless a different notice period is specified in an applicable tariff. GNAPs is entitled to receive at least 30 days' notice to a discontinuance of service, and should not be bound by a tariff provision that sets a shorter amount of time.
- Additional services § 5.1: Verizon's proposed language is adopted. As Verizon states, Voice Information Service is not subject to reciprocal compensation provisions. Both Verizon and GNAPs recoup their costs via arrangements with the third-party service / content provider.
- Interconnection § 6.1.1: Verizon's proposed language is adopted. GNAPs would seek to limit the traffic to that for which CPN is passed, without providing any terms for what rate application should apply to minutes where CPN is not passed.

- Interconnection § 7.2: GNAPs' proposed language is adopted. GNAPs will not be subject to additional charges for transporting calls to its POI.
- Interconnection § 7.3: Verizon's proposed language is adopted, with modification. GNAPs' proposed language in Section 7.3.2.1 relating to change in law provisions shall be adopted. The reference to the "FCC Internet Order" shall be revised, in the same manner as required in "T& C Glossary § 2.74" above.
- Interconnection § 7.4: Verizon's proposed language is adopted. While this section does restate federal law, it could be important to have the provision there, if there is a future change in the requirements of the ISP Remand Order.

D. Issue 6

Should limitations be imposed upon GNAPs ability to obtain available Verizon dark fiber?

This issue was resolved by the parties.

Discussion

E. Issue 7

Should two-way trunking be available to GNAPs at GNAPs' request?

GNAPs' Position

GNAPs acknowledges that Verizon does not oppose offering GNAPs two-way trunks, but it insists that the parties need to agree on operational responsibilities and design parameters. GNAPs believes that there will likely be future disagreements on these operational aspects.

Verizon claims that GNAPs is in the best position to forecast both its traffic terminating on Verizon's network and Verizon's traffic terminating on GNAPs' network. In other words, Verizon is making GNAPs responsible for both carriers' traffic forecasts. This is discriminatory and burdensome. A more

equitable resolution is that presented by GNAPs, in that each carrier forecasts the traffic that it believes will terminate on the other carrier's network.

In its Supplemental Filing, GNAPs proposes the following contract language associated with Issue 7:

- T&C Glossary § 2.93 "Traffic Factor I": GNAPs removes the exclusion of Measured Internet Traffic from this formula.
- T&C Glossary § 2.94 "Traffic Factor II": GNAPs replaces "intrastate traffic" with "other traffic."
- Interconnection § 2.2.4: GNAPs' proposed modification, which should read "POI" rather than "IP" makes this provision consistent with earlier POI language, and makes trunk ordering requirements symmetrical.
- Interconnection § 2.4.2: GNAPs clearly indicates that GNAPs has discretion over the initial number of two-way trunks ordered.
- Interconnection § 2.4.4: GNAPs makes forecast obligations for two-way trunking symmetrical upon the parties and indicates that GNAPs' reasonable efforts to provide forecasting according to Verizon's guidelines, rather than strict compliance, are sufficient. It allows Verizon to refuse to accept a substantially compliant forecast unless Verizon demonstrates that newly provided forecast information materially alters the accuracy of the forecast.
- Interconnection § 2.4.6: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by indicating that both parties are required to use specified equipment only where technically feasible.
- Interconnection § 2.4.8: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by indicating that both parties are required to use accepted industry standards rather than a single source of carrier

specifications for two-way interconnection trunk groups.

- Interconnection § 2.4.9: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by raising performance standards for two-way interconnection trunk groups, thereby reducing the likelihood that Verizon will provide GNAPs inferior facilities of its own.
- Interconnection § 2.4.10: GNAPs eliminates a potential barrier to GNAPs use of two-way trunking by requiring Verizon to accept GNAPs' ASRs and to ensure timely installation and activation of such trunks.
- Interconnection § 2.4.11: GNAPs makes monitoring and action to counteract service blockages symmetrical and, hence, more equitable.
- Interconnection § 2.4.12: GNAPs eliminates a potential barrier to GNAPs' use of two-way trunking by eliminating a non-symmetrical requirement that GNAPs submit ASRs to disconnect interconnection trunks in the event of low utilization.
- Interconnection § 2.4.13: GNAPs eliminates Verizon language that attempts to insulate itself from performance requirements in connection with two-way interconnection trunks.
- Interconnection § 2.4.14: GNAPs increases the speed at which either party may replace two-way interconnection trunk groups with one-way interconnection trunk groups.
- Interconnection § 2.4.16: GNAPs' proposed modification makes this provision regarding use of proportionate percentage of use symmetrical upon the parties and, therefore, more equitable. The proposed provision also eliminates an initial 50% per facilities per party presumption that would likely represent a windfall for Verizon over amounts it would be due under the actual Proportionate Percentage of Use (PPU).

It eliminates an unsymmetrical provision that provides that GNAPs must pay for 50% of the nonrecurring charges for interconnection trunks on the Verizon side of GNAPs' IP, and 100% of nonrecurring charges for the portion of facilities on GNAPs' side of the GNAPs' IP.

Verizon's Position

Verizon agrees with GNAPs that pursuant to 47 C.F.R. § 51.305(f), GNAPs has the option to decide whether it wants to use two-way trunks for interconnection. GNAPs' option to use two-way trunking, however, leaves unanswered many operational issues. Because Verizon should be involved in resolving the operational issues that will impact its network, Verizon proposes contract language to ensure mutual consultation and agreement with GNAPs:

- T&C Glossary §§ 2.93 and 2.94: Verizon's proposed terms "Traffic Factor 1" and "Traffic Factor 2" are used in the ICA to separate types of traffic exchanged via interconnection trunks for purposes of rating and billing. GNAPs' changes appear to remove any concession that Measured Internet Traffic is not interstate in nature, which is contrary to the FCC's ruling on the issue. GNAPs' changes to "Traffic Factor 2" muddy the waters. Changing the term "intrastate traffic" to "other" traffic makes the definition vague and unworkable.
- Interconnection §§ 2.2.4(b) and 2.4.11: GNAPs has inserted the terms "originating party" and "terminating party" into these sections. The use of these terms for two-way trunks makes no sense because, on a two-way trunk, both parties originate and terminate traffic. For example, in § 2.4.11, GNAPs would have both parties submit access service requests (ASRs) to one another for the same trunk group. This would create confusion. GNAPs' proposed modifications are also inconsistent with GNAPs' proposed language in §§ 2.4.2 and 2.4.10

in which GNAPs proposed that it would be the only party to submit an ASR.

- Interconnection § 2.4.2: This section is necessary to ensure that both parties decide on the initial number of trunks needed before exchanging traffic. Such agreement is particularly important for the parties in California where they have no history of exchanging traffic. These two-way trunks affect network performance and operation, and each party should have the ability to address these effects. GNAPs does not present any evidence to support its proposed changes.
- Interconnection § 2.4.4: GNAPs' unexplained changes to this section would seem to require Verizon to provide GNAPs with a traffic forecast and alter the good-faith, nonbinding traffic forecast into a trunk reservation policy. GNAPs should be the only party to provide a good faith forecast for both its inbound and outbound traffic because only GNAPs knows how much traffic will originate and terminate on its network. GNAPs needs to provide this information to Verizon because Verizon must ensure that it has adequate facilities in place to meet GNAPs' trunk orders. GNAPs has agreed to this arrangement with Verizon in other jurisdictions.
- Interconnection §§ 2.4.8, 2.4.9, 2.4.13, 2.4.14: GNAPs' revisions to these sections would provide GNAPs with a better grade of service than what Verizon provides to other carriers with whom it interconnects or to itself. In the Level 3 FAR, Level 3 argued for a higher blocking standard than the standard Pacific applied to itself and other carriers. Relying on Iowa Utilities Board v. FCC, the arbitrator held that Pacific was not obligated to provide Level 3 with a better grade of service than what Pacific provides for itself.
- Interconnection § 2.4.12: Without explanation, GNAPs has eliminated this section that would enable Verizon to disconnect some underutilized trunks from trunk

groups. When trunk groups are significantly underutilized, Verizon only disconnects enough excess trunks to ensure that Verizon will be able to manage its network in an efficient manner. If Verizon cannot disconnect these underutilized trunks, this could have a negative impact on other carriers that order interconnection trunks from Verizon. GNAPs would force Verizon to maintain excess capacity for GNAPs at Verizon's expense without any revenue or benefit to Verizon.

- Interconnection § 2.4.16: The purpose of Verizon's recurring and nonrecurring charges are meant to compensate Verizon for the work Verizon performs on those two-way trunks. Verizon only assesses GNAPs a recurring charge for the two-way trunks that is commensurate with the traffic that GNAPs originates to Verizon. GNAPs' edits make this provision less equitable because they would require Verizon to perform work on two-way trunk facilities on GNAPs' behalf and GNAPs would not compensate Verizon for its services. With regard to the nonrecurring charges, when Verizon supplies the two-way trunk, it performs work on behalf of GNAPs. Because Verizon uses the two-way interconnection trunk with GNAPs, Verizon derives a benefit from the service it provided to GNAPs, so it assesses GNAPs only a 50% nonrecurring charge for the costs Verizon incurs.
- Interconnection § 6.2: The requirement that the parties exchange CPN data is critical to ensuring the proper traffic classification. GNAPs' changes to § 6.1 amount to a "trust us" approach. GNAPs compounds the concerns raised by its edits to §§ 6.1 and 6.2 by deleting in § 6.3 any right either party has to audit traffic to determine whether the traffic classification is correct. GNAPs offers no specific explanation for its changes to § 6.3.
- Interconnection § 7: Without explanation, GNAPs proposes to delete the qualifier "Except as expressly

specified in this Agreement" from the statement in § 7.2 that no additional charges shall apply for the termination from the IP to the Customer of Reciprocal Compensation Traffic delivered to the Verizon-IP by GNAPs or the GNAPs-IP by Verizon. In § 7.3.3, GNAPs deletes the reference to calls originated on a 1+ presubscription or casual dialed calls in the same way as it did in the Glossary definition of "Toll Traffic." In § 7.4, GNAPs would delete the requirement for symmetrical reciprocal compensation rates between the parties. This proposal is in contradiction of the FCC's requirement for symmetrical reciprocal compensation between carriers as described in 47 C.F.R. § 51.711. GNAPs has not submitted a cost study to the Commission to support its position.

Discussion

The parties agree that GNAPs has the right, at its sole discretion, to utilize two-way trunking. The parties disagree, however, on the need for certain operational issues. The disputed language from Issue 7 is resolved as follows:

- T&C Glossary §§ 2.93 and 2.94: Verizon's proposed language is adopted. GNAPs does not explain the reason for its proposed language, and Verizon terms GNAPs' language vague and unworkable. Verizon indicates that the terms "Traffic Factor 1" and "Traffic Factor 2" are used to separate types of traffic exchanged via interconnection trunks for purposes of rating and billing. It makes sense to include those definitions in the ICA.
- Interconnection § 2.2.4: Verizon's proposed language is adopted. Verizon is correct that both parties originate traffic over two-way trunks, so it makes no sense to include a reference to "the originating party." GNAPs should be responsible for submitting the ASR to augment the trunk group.
- Interconnection § 2.4.2: Verizon's proposed language is adopted. Since both parties will be sending traffic over any two-way interconnection trunks, they need to meet and mutually agree on the initial number of trunks required. GNAPs should not have the right to make that determination unilaterally.
- Interconnection § 2.4.4: There is no reason why the trunk forecasting requirement cannot be symmetrical. While initially Verizon will have difficulty in making accurate forecasts, that should change as the parties begin to exchange traffic.
- Interconnection § 2.4.6: GNAPs' proposed language is adopted. It makes no sense to require use of particular equipment if it is not technically feasible to do so.
- Interconnection §§ 2.4.8, 2.4.9: Verizon's proposed language is adopted. Under the terms of Iowa Utilities

Board v. FCC, Verizon is not required to provide GNAPs a better grade of service than what Verizon provides for itself or other CLECs.

- Interconnection § 2.4.10: GNAPs' language is adopted. It is reasonable to include a requirement that Verizon reasonably accept ASRs submitted by GNAPs.
- Interconnection § 2.4.11: Verizon's proposed language is adopted, with modification. There is no reason why both parties should not monitor the operation of two-way trunk groups. However, it is Verizon who will issue a Trunk Group Service Request to GNAPs, directing GNAPs to submit an ASR to augment the trunk group. If GNAPs discovers a blocking problem, it can submit an ASR to Verizon on its own. GNAPs' references to "receiving party" and "originating party" are confusing.
- Interconnection § 2.4.12: Verizon's proposed language is adopted. As Verizon states, when trunk groups are significantly underutilized, Verizon only disconnects enough excess trunks to ensure that Verizon will be able to manage its network in an efficient manner. This will allow those underutilized trunks to be used by Verizon or other carriers.
- Interconnection § 2.4.13: In its Comments on the DAR, Verizon asserts that it would be unfair to hold Verizon accountable for performance measures and penalties for two-way trunks because Verizon is not primarily responsible for the engineering of the trunk groups between the parties. GNAPs maintains responsibility for the trunks by issuing ASRs. Moreover, there are no trunk blocking performance measures for two-way CLEC / Verizon trunks in California. Verizon's position is adopted. Verizon has made a convincing argument that it should not be penalized for something that is outside of its control.
- Interconnection § 2.4.14: Verizon's proposed language is adopted. GNAPs is not entitled to an expedited time

period for replacing two-way interconnection trunk groups with one-way interconnection trunk groups.

- Interconnection § 2.4.16: GNAPs' proposed language is adopted. Each party shall pay its share of the trunks based on the PPU factor. The PPU shall not be used to calculate the charges on the other party's side of the POI.
- Interconnection § 6.2: Verizon's proposed language is adopted. The requirement that the parties exchange CPN data is critical to ensuring the proper traffic classification. Verizon's reference to calculating billing minutes in accordance with applicable tariffs is also adopted. This reference to Verizon's tariffs ensures that measurements for billing purposes will be consistent.

F. Issue 8

Is it appropriate to incorporate other documents into the agreement by reference, including tariffs, instead of fully setting out those provisions in the agreement?

GNAPs' Position

As a basic tenet of law, the ICA should be the sole determinant of the rights and obligations of the parties to the greatest extent possible. Verizon, in contrast, proposes numerous citations and references to tariffs and other documents outside the four corners of the ICA. The effect is that Verizon is able to change the terms and conditions of the ICA without GNAPs' assent, ignoring GNAPs' need for the stability and certainty of its ICA with Verizon. Although tariffs are the best example of how Verizon can unilaterally make subsequent changes affecting the rights of the parties, Verizon can also make changes to the CLEC handbook, which is not subject to Commission review and approval.

Verizon argues that a tariff filing is a matter of public notice and that GNAPs has the right to contest such filing. This misses the point that the ICA

represents a meeting of the minds. Also, even though GNAPs can contest a tariff, it must be aware of the filing, and it is burdensome for a small carrier to investigate each and every tariff filed by Verizon.

GNAPs concludes that tariffs should not be permitted to supercede ICA rates, terms, and conditions of the contract. Definitions contained in Verizon's tariffs should not prevail over the definitions within the ICA. The parties' ICA should define "Tariff" so as to exclude incorporation of future tariffs.

In its Supplemental Filing, GNAPs proposes the following contract language associated with Issue 8:

- GT&C §§ 1.1, 1.2, 1.3, 4.7, 6.5, 6.9, 41.1, 47: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Additional Services §§ 9.1, 9.2: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Interconnection §§ 1, 2.1.3, 2.1.3.3, 2.1.6, 2.4.1, 6.2, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 9.2.2, 10.1, 10.6, 16.2: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Resale §§ 1, 2.1, 2.2.4: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Network Elements §§ 1.1, 1.4.1, 1.8, 4.3, 4.7.2, 6.1, 6.1.4, 6.1.11, 6.2.1, 6.2.6, 8.1, 12.11: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Collocation § 1: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.
- Pricing §§ 9.5, 10.2.2: GNAPs' proposed modifications eliminate improper incorporation by reference of Verizon's tariffs.

Verizon's Position

According to Verizon, GNAPs misapprehends the fundamental distinction Verizon makes in its proposed ICA. For prices or rates in the ICA, the parties should rely on the appropriate Verizon tariff as the first source for applicable prices. As for terms and conditions in the ICA, these terms and conditions would trump any conflicting terms and conditions that may be contained in a Verizon tariff. Thus, a term and condition in the tariff will only supplement the ICA's terms and conditions, it will not alter the ICA's terms and conditions if there is a conflict.

Verizon asserts that GNAPs' opposition to any reference to a tariff is shortsighted, restrictive, and inconsistent with language upon which the parties already agree. In § 9.3 of the Pricing Attachment, GNAPs and Verizon agreed that the applicable tariffs are the first source of prices for services provided under the ICA. Despite this agreement, GNAPs' proposed contract changes would "freeze" any current tariff prices, preventing any changes to tariff prices from becoming effective.

Verizon's proposal ensures that prices are set and updated in a manner that is efficient and nondiscriminatory to all CLECs. Verizon's proposed references to tariffs also eliminate any arbitrage opportunity that would result from GNAPs' proposal locking Verizon into contract rates, while GNAPs remains free to purchase from future tariffs should the tariff rates prove more favorable. If other carriers opt into the GNAPs' ICA, the tariff process could be rendered moot.

Verizon states that, under the Commission's rules, parties have an opportunity to protest a tariff filing. When Verizon files a tariff, GNAPs will receive notice of the filing and have an opportunity to comment. This

Commission previously rejected a similar argument raised by Level 3. In the Level 3 FAR, the arbitrator held that:

> General Order (GO) 96-A requires that notice of proposed tariff changes be served on competing utilities, as well as utilities and interested parties having requested such notification. (GO 96-A, § III.G.1.3 and 4). Level 3 is a competing utility, and is an interested party that could request notification, which Pacific is required to provide. (Level 3 FAR at 16.)

Moreover, because Verizon's proposal gives precedence to the terms and conditions of the ICA, GNAPs need not act as the "tariff police" by reviewing the details of every tariff filing in fear that it may contradict the terms of the ICA.

GNAPs mistakenly relies on a previous Commission decision refusing to allow extraneous documents to be referenced in the ICA between Pacific and MCImetro Access. That decision rejected Pacific's proposed language because it incorporated into the ICA "any [outside] document referred to in the ICA".[12] Unlike the proposal in the Pacific proceeding, Verizon has limited its reference to tariffs and orders, which do not implicate the Commission's previously expressed concern about any document being incorporated into an ICA. Moreover, the Commission previously has permitted incorporation of tariffs into ICAs on a case-by-case basis.[13]

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[12] In Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, Final Arbitrator's Report, A.01-01-010 (filed Jan. 8, 2001).

[13] *See Id.* at 16.

GNAPs has broadly challenged the appropriateness of referencing tariffs in the parties' ICA. However, GNAPs' rationale does not apply to many of the contract sections containing deletions of tariff references as shown in the redline version filed. GNAPs failed to address each section in detail which leaves many proposed contract changes unsupported.

Verizon provides the following regarding the specific contract sections in which GNAPs has proposed deletion of a tariff reference:

- GT&C §§ 1.1 through 1.3, 4.7: Verizon's reference to tariffs in these sections sets up the order of precedence discussed above.
- GT&C § 6.5, 6.9: Verizon's reference to tariffs in these sections ensures that Verizon's practice of requiring cash deposits or letters of credit is consistent for all carriers and with any practice sanctioned by the Commission.
- GT&C § 41.1: Verizon's reference to tariffs in this section ensures that Verizon's practice of collecting taxes from the purchasing party is consistent for all carriers and with a practice sanctioned by the Commission.
- GT&C § 47: Verizon's reference to tariffs in this section ensures that restrictions on use of Verizon's services will be enforced by GNAPs when Verizon no longer has the relationship with the end-user. For example, if GNAPs purchases retail telecommunications service for resale, restriction on that service will only be articulated in Verizon's retail tariff. GNAPs should not evade its responsibility to ensure proper use of retail services by its end-users by deleting reference to the only document that would contain them. The general concerns GNAPs discussed in connection with this issue do not apply to the reference in this section.
- Additional Services §§ 9.1 and 9.2: Verizon's reference to tariffs in these sections ensures that the practices

associated with granting access to its poles, conduits and rights-of-way is consistent for all carriers and with any practice sanctioned by the Commission.

- Interconnection §§ 1, 2.1.3.3, 2.1.4, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 16.2: Verizon's reference to tariffs ensures that the parties interconnect with one another in accordance with their respective tariffs when appropriate. Because the parties may exchange and / or deliver exchange access traffic, and other traffic that is not covered by the parties' ICA, the reference to the parties' respective tariffs properly inform the parties that the rates, terms and conditions for this traffic are addressed in their tariffs.
- Interconnection § 2.1.6: The reference to GNAPs' tariff in this section is appropriate because not all of its rates, terms and conditions may be contained in the ICA.
- Interconnection §§ 9.2.2, 10.1, 10.6: Striking the references to Verizon's applicable access tariffs is inconsistent with the industry standard and applicable law. For instance, parties to an ICA refer to their applicable access tariffs in meet point billing arrangements because the customer is the toll provider, not generally GNAPs or Verizon. In addition, when GNAPs purchases access toll connecting trunks for the transmission and routing of traffic between GNAPs' local customer and an IXC, GNAPs purchases those trunks from Verizon's applicable access tariff because it is an access service.
- Resale §§ 1, 2.1, 2.2.4: GNAPs does not specifically address its rationale for deleting references to tariffs in these sections dealing with resale of Verizon's telecommunications services. The general objections are inappropriate in light of the fact that it is Verizon's retail telecommunications services as set forth in Verizon's retail tariff that are resold. There will be no separate list of retail telecommunications services within the ICA. Verizon's reference to tariffs in this

section ensures that restrictions on use of Verizon services will be enforced by GNAPs when Verizon no longer has the relationship with the end-user.

- Unbundled Network Elements (UNE) § 1.1: Even though Verizon does not have a UNE tariff in California, if and when Verizon does implement one, the reference to tariffs in this section ensures that if the parties' ICA does not address the provisioning of a UNE, Verizon's applicable tariff may address the subject.
- Unbundled Network Elements § 1.4.1: GNAPs' general objections to tariffs are out of place because in this section Verizon's tariffs only apply when and if a change in law dictates that Verizon is no longer required to provide GNAPs a UNE or UNE combination. Should this event come to pass and GNAPs would like to receive a similar service, Verizon will provide it in accordance with its tariff.
- Unbundled Network Elements § 1.8: The reference to Verizon's tariff in this section ensures that Verizon's premises visit charge is uniform for all customers.
- Unbundled Network Elements §§ 4.3, 6.1, 6.1.4, 6.1.11, 6.2.1, 6.2.6, 8.1, 12.11: The reference to Verizon's tariff is appropriate because not all the rates may be addressed in the pricing attachment to the ICA. If they are not, Verizon is simply informing GNAPs that the applicable rate may be found in Verizon's tariff.
- Unbundled Network Elements § 4.7.2: The reference to Verizon's applicable tariff is beneficial to GNAPs. If a shorter collocation augment interval exists in Verizon's tariff, Verizon will comply with the shorter interval instead of the longer one contained in the ICA.
- Collocation § 1: GNAPs' general objection to tariff references is particularly inappropriate because Verizon's rates, terms and conditions for collocation can only be found in Verizon's collocation tariff.

- Pricing §§ 9.5 and 10.2.2: GNAPs already agreed that charges for a service will be stated in the applicable tariff. See § 9.2 of Pricing Attachment. Its agreement to this approach is inconsistent with its proposed deletion of § 10.2.2. Moreover, in § 9.5, it appears that GNAPs proposes to freeze those tariff prices to allow it a choice of picking between the tariffs in effect at the time of the ICA or a subsequent tariff price. GNAPs should not be permitted to preserve such a price arbitrage opportunity.

Discussion

The issue of whether Verizon shall be allowed to reference its tariffs shall be determined on a case-by-case basis. I concur with GNAPs' contention that definitions or other terms and conditions in the ICA should not be superceded by tariffs. However, there are occasions where it is better to reference a tariff than to replicate all tariff provisions in the ICA. Still, there are several instances where Verizon's tariff references are too broad and overarching.

In the following section, I dispose of the contract language disputes relating to Issue 8:

- GT&C §§ 1.1, 1.2, and 1.3: GNAPs' proposed language is adopted. Verizon's proposed language is much too broad and overarching. And in Section 1.3, Verizon reserves to itself the right to modify or withdraw a tariff without notice to GNAPs, which is contrary to the provisions of our General Order 96-A.
- GT&C §§ 6.5, 6.9: Verizon's proposed language is adopted. In these sections, Verizon refers to a specific tariff relating to deposits and payment of interest. By referencing the tariff in this instance, it is not necessary to include language on deposits in the ICA. If GNAPs wanted other language relating to deposits, it should have presented its language in the arbitration.

- GT&C § 41.1: Verizon maintains a list of taxes and surcharges in its tariff. It is appropriate to refer to that tariff section in the ICA, since the taxes or surcharges required could change during the life of the ICA.
- GT&C § 47: GNAPs' proposed language is adopted. Verizon's language is much too broad and would be difficult for GNAPs to comply with. It is more exact to include the specific statement relating to a specific tariff, as Verizon has done in some instances. In that way, GNAPs would have a better idea of which tariff provisions it needs to comply with. Verizon gives the example of resale of retail services. However, that issue is specifically addressed in the Resale Appendix, and need not be addressed here.
- Glossary § 2.73 "Rate Demarcation Point:" In its Comments on the DAR, Verizon states that while this section includes disputed language, neither party addressed it specifically, and the DAR did not resolve the parties' competing language for this term. Verizon's proposed language, which references its tariff, is adopted.
- Additional Services §§ 9.1 and 9.2: Verizon's proposed language is adopted. GNAPs did not proffer language relating to access to rights of way. Without detailed terms and conditions relating to that access, the parties could end up with disputes.
- Interconnection §§ 1, 2.1.3.3, 2.1.4, 2.1.6, 2.4.1, 5.4, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, 9.2.2, 10.6, 16.2: Verizon's language in §§ 1, 8.1,and 16.1 is too broad and shall not be adopted. Verizon's references to specific tariffs in §§ 2.1.3.3, 2.4.1, 8.2, 9.2.2, 10.1, 10.6 are appropriate and should be retained in the ICA. As Verizon states, its access services are not included in the ICA so there is a need to refer to that particular tariff. Verizon's proposed language in § 2.1.6 is adopted. As Verizon states in its Comments on the DAR, the reference to GNAPs' tariffs is appropriate because not all of GNAPs'

rates, terms and conditions may be contained in the ICA. In its Comments on the DAR, Verizon indicates that the DAR did not address the disputed language in § 5.4.[14] Verizon's proposed language is adopted. This is an appropriate tariff reference. Verizon's tariff reference in § 8.4 is adopted. There is a need to address how the parties will handle any traffic not specifically addressed in the ICA. Verizon's proposed language in §§ 8.5.2 and 8.5.3 is adopted. The reference to a tariff in these instances is reasonable. In its Comments on the DAR, Verizon indicates that the DAR does not resolve the parties' competing language for Interconnection § 2.1.4. Verizon's proposed language in § 2.1.4 is adopted. As Verizon points out, this is consistent with the outcome in § 2.1.3.

- Resale §§ 1, 2.1 and 2.2.4: Verizon's proposed language is adopted. As Verizon says, its retail telecommunications services are set forth in its tariff, along with any restrictions that apply to use of those services. GNAPs should be held accountable for ensuring that restrictions on the use of Verizon services will be enforced by GNAPs.
- Network Elements: Verizon acknowledges that it currently has no UNE tariff in California. If and when it does implement one, the reference to tariffs in this section would apply. There is no point in referring to a tariff that does not exist. GNAPs' proposed language in §§ 1.1, 1.4.1, 4.3, 4.7.2, 6.1, 6.1.4, 6.1.11, 6.2.1 relating to this issue is adopted. Verizon's proposed language in § 1.8 is adopted. In this case, Verizon is referring to the Premises Visit Charge in its tariffs, not to a nonexistent

[14] Verizon first indicates the disputed language is in § 5.3, but then acknowledges that it is referring to §5.4 in Verizon's proposed interconnection agreement, which is the document the arbitrator is using. I will refer to this disputed issue regarding a tariff reference as §5.4.

UNE tariff. Verizon's proposed language in § 6.2.6 is adopted. Here Verizon is referring to the time and material rates in its tariffs, not to a UNE tariff. Verizon's proposed language in § 12.11 is adopted. Verizon is not referring to a UNE tariff in this section. Verizon points out in its Comments to the DAR that it inadvertently included UNE § 8.1 in the list of disputed issues. Because the parties' dark fiber settlement resolved all disputed contract language associated with UNE § 8, the FAR need not address this issue. Parties should incorporate language consistent with their dark fiber settlement.

- Collocation § 1: Verizon's proposed language is adopted, with modification. Collocation procedures are detailed and complex, and the one-half page devoted to Collocation in the ICA does not begin to cover all those terms and conditions. There is a need to refer to the collocation tariff to find those detailed terms and conditions.
- Pricing §§ 9.5, 10.2.2: Verizon's proposed language is adopted. As Verizon states, this will ensure that all CLECs pay the same rates, and receive service under the same terms and conditions.

G. Issue 9

Should Verizon's performance standards language incorporate a provision stating that if state or federal performance standards are more stringent than the federally imposed merger performance standards, the parties will implement those more stringent requirements?

This issue was resolved by the parties.

H. Issue 10

Should the ICA require GNAPs to obtain excess liability insurance coverage of $10,000,000 and require GNAPs to adopt specified policy forms?

GNAPs' Position

Verizon proposes burdensome insurance limits. It is inexplicable why Pacific would agree that GNAPs has sufficient coverage, but Verizon does not. GNAPs' current commercial liability insurance coverage of $1 million with $10 million in excess liability coverage is more than adequate to cover any damages that may occur from GNAPs' operations. Verizon has not indicated any circumstance which has resulted in damages or injuries in excess of this amount committed by either GNAPs or any other CLEC.

In its Supplemental Filing, GNAPs proposes the following arguments for its proposed contract language associated with Issue 10:

- GT&C § 21.1: GNAPs' proposed modification would make the insurance obligations under the ICA more equitable by making them symmetrical.
- GT&C § 21.1.1: GNAPs would reduce an unreasonably high coverage level for commercial general liability insurance.
- GT&C § 21.1.2: GNAPs would eliminate an unnecessary vehicle insurance requirement.
- GT&C § 21.1.3: GNAPs' would reduce an unreasonably high coverage level for excess liability insurance.
- GT&C § 21.1.5: GNAPs would eliminate an unnecessary all-risk property insurance requirement for GNAPs property located at Verizon premises (including collocation sites).
- GT&C § 21.2: GNAPs would make requirements for deductibles, self-insurance retentions or loss limits on policies required by § 21 more equitable by making them symmetrical.
- GT&C § 21.3: GNAPs would make the duty to add additional insurance obligations under the ICA more equitable by making them symmetrical.

- GT&C § 21.4: GNAPs makes the certificate of insurance obligations of this provision symmetrical and, hence, more equitable.
- GT&C § 21.5: GNAPs makes provisions for contractor insurance symmetrical and, hence, more equitable.
- GT&C §§ 21.6, 21.7: GNAPs makes provisions for failure of contractors to obtain insurance and for contractors' insurance certificates symmetrical and, hence, more equitable.

Verizon's Position

Verizon is required to enter into ICAs with CLECs. In light of that requirement it is reasonable for Verizon to seek protection of its network, personnel, and other assets in the event a CLEC has insufficient financial resources. GNAPs proposes amendments to Verizon's proposed insurance requirements that eliminate certain types of insurance and substantially lower the insurance amounts. Verizon asserts that its proposed insurance requirements are reasonable and consistent with what Verizon requires of other carriers.

In § 20 of the GT&C Section, GNAPs agrees to indemnify Verizon. As a natural extension of the indemnification, Verizon's proposed § 21 requiring insurance provides the financial guarantee to support the promised indemnifications. Verizon's recent experience with CLEC bankruptcies reveals that insurance coverage is often the only source of recovery. Verizon states that GNAPs' proposed coverage is inadequate. For example, GNAPs proposes that the general commercial and excess liability coverage be limited to $1,000,000. In today's environment many individuals have more than $1,000,000 coverage for liabilities associated with their residence and personal autos.

The FCC has concluded that "LECs are justified in requiring interconnectors to carry a reasonable amount of liability insurance coverage."

(Second Report at ¶ 345.) with regard to insurance amount, the FCC found that "a LEC's requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average," (*Id.* at ¶ 346.) which the FCC calculated as $21.15 million in 1997. The aggregate amount of insurance Verizon seeks from GNAPs falls below this measure of reasonability.

Verizon provides the following regarding GNAPs' edits to the ICA relating to Issue 10:

- Section 21.1.2: Although GNAPs proposes to delete the reference to vehicle insurance entirely, commercial automobile liability insurance should be provided to ensure that GNAPs' vehicles used in proximity to Verizon's network are adequately insured and that excess coverage is provided for employees operating personal vehicles relating to the performance of the agreement.
- Section 21.1.3: Excess liability insurance should be provided with limits of not less than $10,000,000 and not the $1,000,000 that GNAPs proposes for exposures associated with Verizon's property and equipment, activities of GNAPs' subcontractors, or GNAPs' related activities occurring while on Verizon's premises.
- Section 21.1.4: An employer's liability limit of $2,000,000 rather than GNAPs' $1,000,000 is standard in the industry and is an area of increased claims activity.
- Section 21.1.5: GNAPs should provide coverage for any real and personal property located on Verizon's premises. It is good business practice to adequately insure your property and that of your employees.
- Section 21.3: In the insurance arena, the additional insured provision is used to appoint one party's insurance as the primary contact and it provides for the defense of both parties. This avoids insurance company

> "finger pointing" in the event of a loss. If both parties are named, each cancels out the other's insurance.

Discussion

GNAPs proposed language in Section 21 is adopted, with modification. It is more equitable to make the insurance requirements symmetrical between the parties. Also, Verizon's proposed coverage appears to be excessive, in light of the fact Pacific agreed to lower amounts in its ICA with GNAPs.

In its Comments on the DAR, Verizon indicates that the $10 million in excess liability insurance which it proposes in § 21.1.3 is the same amount to which Pacific and GNAPs agreed. Verizon claims that it would be unfair to leave Verizon with only 10% of the excess liability coverage to which Pacific and GNAPs agreed. I agree with Verizon's argument. Verizon's proposed language in § 21.1.3, which provides for $10 million in excess liability insurance, is adopted.

Verizon also states that the symmetrical outcome with respect to the "additional insured" provision at § 21.3 is problematic. In the insurance industry, when two parties have insurance coverage for the same assets or potential losses, the function of the "additional insured" provision is to ensure that one of the insurance companies takes the lead in providing a defense. Because GNAPs' risk is significantly less than Verizon's the FAR should eliminate the "symmetry" and instead adopt Verizon's proposed § 21.3. Verizon's proposed language in § 21.3 is adopted.

I. Issue 11

Should the ICA include language that allows Verizon to audit GNAPs' "books, records, documents, facilities, and systems?"

GNAPs' Position

GNAPs does not believe that Verizon should be allowed to audit its accounts and records because much of the material contained in those records is competitively sensitive. If GNAPs were compelled to provide Verizon with access to redacted records, the costs of sanitizing those records would be prohibitive. There is no need for Verizon to require this information since it should have its own records of calls exchanged between GNAPs and Verizon.

In its Supplemental Filing, GNAPs proposes the following arguments for its proposed contract language associated with Issue 11:

- Interconnection § 6.3: GNAPs eliminates an apparently limitless number of audits that can be ordered by either party, a provision that would otherwise possibly be abused by Verizon.
- GT&C § 7, Interconnection § 10.13: GNAPs eliminates the unreasonable requirement of Verizon that each party be allowed extensive rights to audit books, records, documents, facilities, and systems, a provision that could allow Verizon to overwhelm a small competing carrier with audit requests and compromise GNAPs' confidential strategic plans.
- Additional Services § 8.5.4: GNAPs eliminates Verizon's nonsymmetrical right of audit by which it may review GNAPs' books to ascertain compliance with applicable laws and the ICA with respect to Verizon OSS information.

Verizon's Position

Despite the fact that GNAPs refuses to provide Verizon with audit rights, that is exactly what it has done in its ICA with Pacific. GNAPs proposes to entirely delete Verizon's proposed audit provisions, providing neither party with the ability to evaluate the accuracy of the other party's bills.

Verizon clarifies that its proposal applies equally to both parties, not just GNAPs. Second, GNAPs would not be providing records to Verizon; but

pursuant to § 7.2, the audit would be performed by independent certified public accountants, selected and paid for by the auditing party. Also, the auditing accountant would not have access to all records. The records accessed would be only those necessary to evaluate the accuracy of the audited party's bills.

Verizon does not seek the audit rights as a competitor of GNAPs, but as a customer. Without audit rights, Verizon is asked to accept GNAPs' charges without the ability to verify their accuracy or appropriateness. Such provisions are common in the industry. In at least 70 ICAs, Verizon has audit provisions that allow either carrier to audit the books and records of the other pertaining to the services provided under the ICA.

GNAPs claims that the terms of the proposed Template Agreement are sufficiently clear and ensure compliance with the ICA for the purposes of billing and recordkeeping purposes. Further, GNAPs points to the right to pursue appropriate legal or equitable relief in the appropriate federal or state forum. In effect, GNAPs suggests that Verizon should initiate litigation and engage in discovery if it wishes to question the appropriateness of a bill. The parties should not have to resort to litigation in order to obtain an audit.

According to Verizon, it is no mystery why GNAPs hopes to deprive Verizon of the audit rights it seeks while granting audit rights to Pacific. Verizon uncovered an illegal billing scheme GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation (See Verizon's Complaint filed in New York Telephone Company, et al. v. Global NAPs, Inc. et al., No.00 Civ. 2650 (FB)(RL), (E.D.N.Y.).

Discussion

It is a standard practice in ICAs to include audit requirements. This does not mean that a carrier has limitless opportunities to make intrusive audits

of its competitor's records. However, given the nature of the agreement between the parties, there is a need to be able to audit the traffic exchanged between the parties.

- Interconnection § 6.3: Verizon's proposed language is adopted, with modification. Verizon asks for two traffic audits per year, and the number only increases if the preceding audit disclosed "material errors or discrepancies." The DAR reduced the number of audits to one per year. Given the nature of the traffic exchanged between the parties, and the need to rely on data from the other carrier, it is appropriate to include audit rights in the ICA In its Comments on the DAR, Verizon reiterates its request to be able to audit GNAPs' traffic at least twice a year because it has uncovered what it believes is "an illegal billing scheme that GNAPs implemented to overcharge Verizon millions of dollars under the guise of reciprocal compensation." However, since the contract language includes a provision for additional audits if an audit discloses "material errors or discrepancies," Verizon would be able to schedule additional audits if it found a problem. I will allow one audit per year, but I will leave in the provision that additional audits may be conducted if the preceding audit disclosed material errors or discrepancies.
- Interconnection § 10.13: Verizon's proposed language is adopted. The audit provisions are reasonable.
- Additional Services § 8.5.4: In its Comments on the DAR, Verizon explains that it needs to make certain that GNAPs is using OSS in the manner intended. Hundreds of other carriers rely on access to Verizon's OSS, and Verizon wants the right to monitor its OSS so that all carriers alike receive uninterrupted access to this system. Verizon's argument is convincing, and its proposed language in this section is adopted.

- GT&C § 7: Verizon's proposed language is adopted. It is reasonable that either carrier be able to audit the accuracy of bills once a year. The auditing party must hire an outside auditor and pay all costs associated with the audit. The language presented provides for protection of confidential information.

J. Issue 12

Should Verizon be permitted to collocate at GNAPs' facilities in order to interconnect with GNAPs?

Verizon's Position

GNAPs proposes edits to § 2.1.5 that only allow Verizon to collocate "subject to GNAPs' sole discretion and only to the extent required by Applicable Law."

Verizon recognizes that Section 251(c)(6) of the Act applies to ILECs, and not to CLECs. Nothing in the Act, however, prohibits the Commission from allowing Verizon to interconnect with the CLECs via a collocation arrangement at their premises. By preventing Verizon from doing so, GNAPs limits Verizon's interconnection choices with GNAPs.

Furthermore, pursuant to GNAPs' proposals, all of the interconnection locations are determined by GNAPs, which gives GNAPs every means available to minimize its own expenses and maximize Verizon's. This is why Verizon proposes some reasonableness on GNAPs' discretion either through the VGRIP proposal, or through reasonable rules on collocation and distance-sensitive transport rates. Any CLEC that interconnects with Verizon makes a choice: either voluntarily allow Verizon to collocate at the CLEC's facilities or forgo charging Verizon distance sensitive rates for transport.

GNAPs' Position

GNAPs indicates that it is not required to provide Verizon with collocation at GNAPs' facilities, and will only do so "subject to GNAPs' sole discretion and only to the extent required by applicable law." The Act limits the duty to provide collocation to the premises of the ILECs. This responsibility does not extend to CLECs.

Verizon has enormous technical and financial resources that will enable it to minimize inconveniences caused by collocation arrangement limitations.

GNAPs presents its proposed contract language on Issue 12:

- Interconnection §§ 2.1.5.1, 2.1.5.2, 2.1.5.3: GNAPs clarifies its right of reasonable approval of Verizon methods for interconnection with GNAPs.

Discussion

The Act does not require GNAPs to provide collocation to Verizon, and I will not require GNAPs to provide that service. As GNAPs stated, Verizon is a company with significant financial and technical resources, and should be able to accommodate any interconnection request GNAPs makes. GNAPs' proposed language in Interconnection §§ 2.1.5.1, 2.1.5.2, 2.1.5.3 is adopted.

K. Issue 13

Should GNAPs be permitted to avoid the effectiveness of any unstayed legislative, judicial, regulatory or other governmental decision, order, determination, or action?

Verizon's Position

GNAPs failed to provide any explanation as evidence to support its proposed change to § 4.7. Consistent with Verizon's general approach to make "applicable law" the cornerstone of the proposed ICA, Verizon's proposed language is the mechanism that ensures the parties' rights and obligations change with a change in law. GNAPs' proposed edits would delay

implementation of a change of law until appeals are exhausted, even if the change of law is not subject to a stay.

GNAPs' proposed edit regarding any discontinuance of service is superfluous. The parties have agreed that Verizon will provide 30 days' prior written notice of any such discontinuance of a service, unless a different notice period or different conditions are specified in the ICA or applicable law. It is critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to do so under applicable law.

GNAPs' Position

GNAPs believes the ICA should allow the parties to avoid implementation until appeals are exhausted. This interpretation should apply even if a legislative, judicial, regulatory or other governmental decision, order, determination, or action is unstayed.

GNAPs believes it is in neither party's interest to allow law that is in flux to govern affected ICA terms. GNAPs's proposed language in § 4.7 increases certainty and reduces costs for both parties. If nonfinal decisions were allowed to alter the agreement, the imposition of such interim costs would work to the disadvantage of the smaller party, GNAPs.

Discussion

Verzion's language in General Terms and Conditions § 4.7 relating to this issue is adopted. Orders of this Commission and the FCC, as well as court decisions, are effective unless stayed. Any such order or decision which is effective must be incorporated into the terms of this ICA. This Commission expects carriers to implement any order issued, as of its effective date. Carriers do not have the option to avoid implementation by waiting for the results of any final appeal.

L. Issue 14

Should GNAPs be permitted to insert itself into Verizon's Network Management or Contractually Eviscerate the "necessary and impair" analysis to prospectively gain access to network elements that have not yet been ordered unbundled?

Verizon's Position:

Since GNAPs has already agreed to accept Verizon's dark fiber proposal, this issue appears to be moot. Section 42, as proposed by Verizon, clearly states that Verizon will provide interconnection and UNEs to the extent required by applicable law. GNAPs, in its Supplemental Filing explained that its modifications to Section 42 makes the right of carriers to upgrade their systems symmetrical and more equitable and also makes clear that the parties must do so as required by law, not at their discretion. Despite GNAPs' explanation, GNAPs fails to define "next generation technology" and how it would be used in the context of the ICA.

GNAPs' failure to define the terms in its proposed contract necessarily renders this term vague, and it should not be included in the ICA. Applicable law only requires reasonable and nondiscriminatory interconnection to Verizon's existing network, not a superior one.

GNAPs' Position

GNAPs believes that Verizon must in good faith comply with the requirements of applicable law to allow GNAPs reasonable and nondiscriminatory access to all next generation technology for the purpose of providing telecommunications services.

GNAPs indicates that its term "next generation technology" is not vague, given that it is limited to technology to which GNAPs is entitled by

applicable law. To the extent that a GNAPs' request for technology was not supported by applicable law, Verizon would not be required to provide it. It is important that this provision be included to emphasize the duty of Verizon to provide GNAPs with state-of-the-art current versions of facilities, services and interfaces for elements subject to unbundling and for effecting interconnection.

Discussion

In its Comments on the DAR, Verizon suggests that the following sentence in GNAPs' proposed § 42 should be stricken: "Verizon is required to provide access to fiber as an unbundled network element according to 47 C.F.R. § 391[sic]." The parties have agreed to address UNEs, including dark fiber, in the Network Elements attachment, which is a separate portion of the ICA. Striking this sentence will ensure consistency with the parties' dark fiber settlement. I concur with Verizon's request to delete that sentence from § 42.

In its Comments, Verizon indicates that GNAPs' proposed language is imprecise in that it suggests that Applicable Law requires access to all next generation technology. Verizon proposes the following language as a substitute for GNAPs' proposed language:

> Notwithstanding any other provision of this Agreement, each Party shall have the right to deploy, upgrade, migrate and maintain its network according to Applicable Law. The Parties acknowledge that Verizon, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit GNAPs' ability to access loops and related technology. Verizon will in good faith allow GNAPs reasonable and non-discriminatory access to next generation technology as required by Applicable Law for the purpose of providing telecommunications services. Nothing in this Agreement shall limit Verizon's ability to modify its network through the incorporation of new equipment or software or otherwise in accordance with Applicable Law.

Verizon's proposed language is adopted. It modifies GNAPs' proposed language only slightly to make it clear that applicable law does not require access to next generation technology.

O R D E R

IT IS ORDERED that, on the schedule specified below, the parties shall file and serve:

1. An entire Interconnection Agreement, for Commission approval, that conforms with the decisions of this Final Arbitrator's Report. A statement which (a) identifies the criteria in the Act and the Commission's Rules (*e.g.*, Rule 4.3.1, Rule 2.18, and 4.2.3 of Resolution ALJ-181), by which the negotiated and arbitrated portions pass or fail those tests; (b) states whether the negotiated and arbitrated portions pass or fail those tests; and (c) states whether or not the Agreement should be approved or rejected by the Commission.

2. The Global NAPs, Inc. / Pacific Bell Telephone Company filings referenced above shall be due on May 22, 2002.

3. The Global NAPs, Inc. / Verizon California Inc. filings referenced above shall be due on May 29, 2002.

Dated May 15, 2002, at San Francisco, California.

/ s / Karen Jones
Karen Jones, Arbitrator
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Final Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

Dated May 15, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.